

ARKANSAS CODE
OF 1987
ANNOTATED

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ARKANSAS CODE

OF 1987

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VOLUME 21

2004 Replacement

TITLE 21: PUBLIC OFFICERS AND EMPLOYEES

TITLE 22: PUBLIC PROPERTY

Prepared by the Editorial Staff of the Publisher

Under the Direction and Supervision of the
ARKANSAS CODE REVISION COMMISSION

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Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2003 Regular Session. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions through 2003 Ark. LEXIS 413 (July 3, 2003) and 2003 Ark. App. LEXIS 575 (July 25, 2003).

Federal Supplement through July 25, 2003.

Federal Reporter 3d Series through July 25, 2003.

United States Supreme Court Reports, through July 25, 2003.

Bankruptcy Reporter through July 25, 2003.

Arkansas Law Notes through the 2001 Edition.

Arkansas Law Review through Volume 56, p. 497.

University of Arkansas at Little Rock Law Journal through Volume 25, p. 752.

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User's Guide

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume, are editorial changes made at the direction of the Arkansas Code Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of Volume 1 of the Code.

TITLE 21

PUBLIC OFFICERS AND EMPLOYEES

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CHAPTER 1

GENERAL PROVISIONS

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SUBCHAPTER 1 — GENERAL PROVISIONS

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- 21-1-101. Computation of length of service.
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- 21-1-105. Employee benefit programs.

Cross References. Compensation and benefits, § 21-5-101 et seq.

Retirement, § 24-1-101 et seq.

Veterans preferences, § 21-3-301 et seq.

Effective Dates. Acts 1917, No. 154, § 3: Mar. 1, 1917.

Acts 1989 (1st Ex. Sess.), No. 247, § 26: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas

prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental pro-

grams. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989.”

Acts 1993, No. 860, § 38: Apr. 2, 1993. Emergency clause provided: “It is hereby found and determined by the Seventy-Ninth General Assembly, that payees listed in this Act may be entitled to the sums appropriated and transferred to

herein, and that they have been deprived of the use of these funds for a long period of time, and that further delay in paying these just debts of the State would do harm to the reputation of the State of Arkansas. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

21-1-101. Computation of length of service.

(a) In computing or granting pensions, retirement pay, eligibility lists based on length of service, or any other right under a civil service or merit system in which length of service is the criterion, time spent by any employee, as defined in subsection (b) of this section, in the armed forces of the United States from September 16, 1940, until December 31, 1946, shall be counted as though the employee had remained continuously in the employment of the agency, department, or office.

(b) The provisions of this section shall apply to any employee of any agency, department, or office supported in whole or in part with tax funds by the State of Arkansas or any county or municipality thereof, whose personnel are regulated by civil service or merit system adopted pursuant to an act of the General Assembly, or the governing body of any county or municipality with the following restrictions:

(1) The employee must have been employed under the civil service or merit system at the time of his or her separation to enter the armed forces;

(2) The employee must have entered the armed forces directly after leaving the employment of the agency, department, or office and must have returned thereto within ninety (90) days after separation from the armed service.

History. Acts 1947, No. 56, §§ 1-3; A.S.A. 1947, §§ 12-2323 — 12-2325.

CASE NOTES

Purpose.

This section requires that time spent in the armed services should be considered

for seniority purposes. *Smith v. Little Rock Civil Serv. Comm'n*, 214 Ark. 765, 218 S.W.2d 366 (1949).

21-1-102. Term of office of certain officers.

(a)(1) The term of office of the Commissioner of State Lands, Justices of the Supreme Court, all district officers, except state senators, all county officers, except members of the lower house of the General

Assembly, and all township officers and road overseers, when road overseers are elected, shall begin on January 1 following their election.

(2) However, in the case of a special election to fill an unexpired term, or to fill an office created after the last preceding general election, the term of the officer so elected shall begin as soon after the election as the result can be ascertained and the person elected can be commissioned and qualified.

(b) All officers shall hold their respective offices for the term prescribed by the law and until their successors are elected and qualified.

History. Acts 1917, No. 154, § 1, p. 809; C. & M. Dig., §§ 8071, 8072; Pope's Dig., §§ 10400, 10401; A.S.A. 1947, § 12-112.

Publisher's Notes. This section, as it applied to justices of the peace, was re-

pealed by Acts 1933, No. 103, which was subsequently repealed by Acts 1937, No. 353, § 3.

Cross References. Continuance in office until successor elected, Ark. Const., Art. 19, § 5.

CASE NOTES

ANALYSIS

Commissioner of state lands.
Constable.

Commissioner of State Lands.

Arkansas Constitution, Amendment 37 (repealed, now see Ark. Const. Amend. 56) did not amend by implication the provisions of Ark. Const., Art. 6, § 3, relating to the election and commencement of term of certain named executive officers so that it applied to the Commissioner of State

Lands, and the commencement of the term of the Commissioner was governed by the provisions of this section even after the adoption of Ark. Const. Amend. 37 (repealed). *Rankin v. Jones*, 224 Ark. 1001, 278 S.W.2d 646 (1955).

Constable.

The term of office of a constable begins on January 1 following his or her election. *Hutcheson v. Pitts*, 170 Ark. 248, 278 S.W. 639 (1926).

21-1-103. Service recognition program.

(a) There is established a method of recognition of service by employees of the State of Arkansas.

(b) The Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration shall coordinate the purchase, distribution, and presentation of service awards based on years of service with the State of Arkansas for full-time employees in all state agencies, boards, commissions, and others under the Governor's direction.

(c) The awards shall be made upon attainment of ten (10), twenty (20), and thirty (30) years of service in state government.

(d) The Chief Fiscal Officer of the State shall promulgate reasonable rules and regulations as he or she deems necessary in carrying out the provisions of this service recognition program.

History. Acts 1989 (1st Ex. Sess.), No. 247, § 19; 1991, No. 786, § 34.

A.C.R.C. Notes. Former §§ 21-1-103 and 21-5-105, concerning the service recognition program, are deemed to be super-

seded by this section. Former §§ 21-1-103 and 21-5-105 were derived from Acts 1985, No. 762, § 18, and Acts 1987, No. 1051, § 21, respectively.

This section was also formerly codified

as § 21-5-105 which was transferred by Acts 1991, No. 786, § 34, to § 21-1-103.

Acts 1991, No. 786, § 37, provided: "The enactment and adoption of this Act shall not repeal, expressly or impliedly, the acts passed at the regular session of the 78th General Assembly. All such acts shall have

full effect and, so far as those acts intentionally vary from or conflict with any provision contained in this Act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987."

21-1-104. Limitation on judicial employment — State employee.

(a) No state employee shall serve both in a full-time quasi judicial position, or in a full-time position which provides legal assistance to a quasi judicial position, in the Arkansas State Claims Commission, Arkansas Public Service Commission, Workers' Compensation Commission, State Department for Social Security Administration Disability Determination, or any other quasi judicial agency, department, or commission and as an elected judge.

(b) For purposes of this section, the term "state employee" shall mean anyone who works one thousand (1,000) hours or more per year and participates in the Arkansas Public Employees' Retirement System.

History. Acts 1993, No. 860, § 29.

21-1-105. Employee benefit programs.

(a) Each state agency, board, commission, and institution of higher education shall develop an informational program explaining the various fringe benefit programs that are provided for employees or in which employees may participate.

(b) Each state agency, board, commission, and institution of higher education shall provide each employee with this fringe benefit program information upon the initial employment of an employee at a new employee orientation meeting.

(c)(1) The program shall include information about the employee's:

- (A) Health and life insurance programs;
- (B) Social security benefits;
- (C) Retirement system benefits;
- (D) Workers' compensation benefits; and
- (E) Employee assistance programs.

(2) The program may include information on other optional programs available to employees, such as deferred compensation plans, credit unions, or similar kinds of programs available for employees.

(d) Each state agency, board, commission, and institution of higher education shall provide each employee with an annual employee benefits statement, which shall summarize the status of the benefit plans in which the employee participates.

(e) The Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration and the Employee Benefits Division of the Department of Finance and Administration shall assist each state agency, board, commission, and

institution of higher education in developing an employee benefits program and employee benefits statement.

History. Acts 2001, No. 1818, § 1. 2001, No. 1818, § 1, subsection (a) began:
A.C.R.C. Notes. As enacted by Acts “Beginning January 1, 2002.”

SUBCHAPTER 2 — ELIGIBILITY FOR OFFICE

SECTION.

21-1-201. Gender not a bar to holding office.

SECTION.

21-1-202 — 21-1-206. [Repealed.]
 21-1-207. State employees.

Cross References. Atheists, qualification for office, Ark. Const., Art. 19, § 1.

Conviction of embezzlement, bar to holding office, Ark. Const., Art. 5, § 9.

Conviction of felony, bar to holding office, Ark. Const., Art. 3, § 6.

Election officers, barred from office, Ark. Const., Art. 3, § 10.

Governor, Lieutenant Governor, acting Governor, ineligibility for appointed office, Ark. Const. Amend. 29, § 2.

Holding of more than one office prohibited, Ark. Const., Art. 19, § 6.

Military officers, school officers, public notaries, permitted to hold office, Ark. Const., Art. 19, § 26.

Qualification as elector required, Ark. Const., Art. 19, § 3.

Religion no bar to holding office, Ark. Const., Art. 2, § 26.

Residence requirement, Ark. Const., Art. 19, § 4.

Senators, representatives, barred from holding office, Ark. Const., Art. 5, § 10.

Effective Dates. Acts 1921, No. 59, § 3: approved Feb. 3, 1921. Emergency clause provided: “This act being necessary for the immediate preservation of the public peace, health and safety, the same shall take effect and be in full force from and after its passage.”

RESEARCH REFERENCES

Am. Jur. 63C Am. Jur. 2d, Pub. Off., § 48 et seq. **C.J.S.** 67 C.J.S., Officers, § 21 et seq.

21-1-201. Gender not a bar to holding office.

(a) Gender shall not be a bar to the holding of any public or civil office in this state.

(b) Women, where otherwise qualified, shall be entitled to hold public or civil office, whether elective or appointive, under the Constitution and statutes of this state.

History. Acts 1921, No. 59, §§ 1, 2; Pope’s Dig., §§ 10436, 10437; A.S.A. 1947, §§ 12-101, 12-102.

CASE NOTES

Cited: King v. Consolidated Freightways Corp., 763 F. Supp. 1014 (W.D. Ark. 1991).

21-1-202 — 21-1-206. [Repealed.]

Publisher's Notes. These sections, concerning ineligibility of defaulters for office, lists of indebted persons, statement of default on certificate of election, withholding of commission or credentials of defaulter elected to office and the office subsequently being deemed vacant, and failure of officer to comply with §§ 21-1-201 — 21-1-205, were repealed by Acts 1993, No. 1279, § 1. The sections were derived from the following sources:

21-1-202. Rev. Stat., ch. 47, § 1; C. & M. Dig., § 3435; Pope's Dig., § 4278; A.S.A. 1947, § 12-103.

21-1-203. Rev. Stat., ch. 47, §§ 2, 4; C. & M. Dig., §§ 3436, 3438; Pope's Dig., §§ 4279, 4281; A.S.A. 1947, §§ 12-104, 12-106.

21-1-204. Rev. Stat., ch. 47, § 3; C. & M. Dig., § 3437; Pope's Dig., § 4280; A.S.A. 1947, § 12-105.

21-1-205. Rev. Stat., ch. 47, §§ 5-8; C. & M. Dig., §§ 3439-3442; Pope's Dig., §§ 4282-4285; A.S.A. 1947, §§ 12-107 — 12-110.

21-1-206. Rev. Stat., ch. 47, § 9; C. & M. Dig., § 3443; Pope's Dig., § 4286; A.S.A. 1947, § 12-111.

21-1-207. State employees.

No employee of the state, a county, a municipality, a school district, or any other political subdivision of this state shall be deprived of his or her right to run as a candidate for an elective office or to express his or her opinion as a citizen on political subjects, unless as necessary to meet the requirements of federal law as pertains to employees.

History. Acts 1997, No. 1214, § 1.

Cross References. Certain political activity prohibited, § 20-76-207.

Limitation of political activity by officer or employee, § 20-79-212.

Participation in political activities, § 14-52-306.

Political activity prohibited, §§ 14-49-306, 14-50-306.

SUBCHAPTER 3 — EMERGENCY INTERIM EXECUTIVE AND JUDICIAL SUCCESSION ACT

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21-1-307. Special emergency judges.

21-1-308. Formalities of taking office.

21-1-309. Period in which authority may be exercised.

21-1-310. Removal of designees.

21-1-311. Disputes.

Effective Dates. Acts 1961, No. 489, § 14: Jan. 1, 1962.

21-1-301. Title.

This subchapter shall be known and may be cited as the "Emergency Interim Executive and Judicial Succession Act".

History. Acts 1961, No. 489, § 1;
A.S.A. 1947, § 12-114.

21-1-302. Legislative intent.

Because of the existing possibility of attack of unprecedented size and destructiveness upon the United States, and in order, in the event of such an attack, to assure continuity of government through legally constituted leadership, authority, and responsibility in offices of the government of the state and its political subdivisions, to provide for the effective operation of governments during an emergency, and to facilitate the early resumption of functions temporarily suspended, it is found and declared to be necessary to provide for:

(1) Additional officers who can exercise the powers and discharge the duties of Governor;

(2) Emergency interim succession to governmental offices of this state and its political subdivisions in the event the incumbents thereof and their deputies, assistants, or other subordinate officers authorized, pursuant to law, to exercise all of the powers and discharge the duties of those offices who are in this subchapter referred to as “deputies” are unavailable to perform the duties and functions of those offices; and

(3) Special emergency judges who can exercise the powers and discharge the duties of judicial offices in the event regular judges are unavailable.

History. Acts 1961, No. 489, § 2;
A.S.A. 1947, § 12-115.

21-1-303. Definitions.

As used in this subchapter:

(1) “Attack” means any attack or series of attacks by an enemy of the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by the use of bombs, missiles, shellfire, or atomic, radiological, chemical, bacteriological, or biological means or other weapons or processes;

(2) “Emergency interim successor” means a person designated pursuant to this subchapter, in the event the officer is unavailable, to exercise the powers and discharge the duties of an office until a successor is appointed or elected and qualified as may be provided by the Arkansas Constitution, statutes, charters, and ordinances or until the lawful incumbent is able to resume the exercise of the powers and discharge the duties of the office;

(3) “Office” includes all state and local offices, the powers and duties of which are defined by the Arkansas Constitution, statutes, charters, and ordinances, except the Office of Governor, and except those in the General Assembly and the judiciary;

(4) “Political subdivision” includes counties, cities, towns, villages, townships, districts, authorities, and other public corporations and

entities whether organized and existing under charter or general law; and

(5) "Unavailable" means either that a vacancy in office exists and there is no deputy authorized to exercise all of the powers and discharge the duties of the office or that the lawful incumbent of the office, including any deputy exercising the powers and discharging the duties of an office because of a vacancy, and his or her duly authorized deputy are absent or unable to exercise the powers and discharge the duties of the office.

History. Acts 1961, No. 489, § 3;
A.S.A. 1947, § 12-116.

21-1-304. Additional successors to Office of Governor.

(a) In the event that the Governor, for any of the reasons specified in the Arkansas Constitution, is not able to exercise the powers and discharge the duties of his or her office, or is unavailable, and in the event the Lieutenant Governor, President Pro Tempore of the Senate, and the Speaker of the House of Representatives are not able, for any of the reasons specified in the Arkansas Constitution, to exercise the powers and discharge the duties of the Office of Governor, or are unavailable, then the Attorney General, Secretary of State, or Treasurer of State, in the order named, shall exercise the powers and discharge the duties of the Office of Governor until a new Governor is elected and qualified, or until one of the officers who precedes him or her in the order of succession becomes available.

(b) However, no emergency interim successor to the offices mentioned in subsection (a) of this section may serve as Governor.

History. Acts 1961, No. 489, § 4;
A.S.A. 1947, § 12-117.

21-1-305. Emergency interim successors for state officers.

(a)(1) All state officers, subject to any regulations which the Governor or other official authorized under the Arkansas Constitution and this subchapter to exercise the powers and discharge the duties of the Office of Governor may issue, in addition to any deputy authorized pursuant to law to exercise all of the powers and discharge the duties of the office, shall designate by title emergency interim successors, and specify their order of succession.

(2) The officer shall review and revise, as necessary, designations made pursuant to this subchapter to ensure their current status.

(3) The officer will designate a sufficient number of emergency interim successors so that there will be not less than three (3) nor more than seven (7) deputies or emergency interim successors or any combination thereof, at any time.

(b)(1) In the event that any state officer is unavailable following an attack and in the event his or her deputy, if any, is also unavailable, the

powers of his or her office shall be exercised, and the duties of his or her office shall be discharged, by his or her designated emergency interim successors in the order specified.

(2) The emergency interim successors shall exercise the powers and discharge the duties only until:

(A) Where a vacancy exists, the Governor or other official authorized under the Arkansas Constitution or this subchapter to exercise the powers and discharge the duties of the Office of Governor appoints a successor to fill the vacancy or a successor is otherwise appointed, or elected and qualified as provided by law; or

(B) An officer or his or her deputy or a preceding named emergency interim successor becomes available to exercise or resume the exercise of the powers and discharge the duties of his or her office.

History. Acts 1961, No. 489, § 5;
A.S.A. 1947, § 12-118.

21-1-306. Emergency interim successors for local officers.

(a)(1) With respect to local offices for which the legislative bodies of cities, towns, villages, townships, and counties may enact resolutions or ordinances relative to the manner in which vacancies will be filled or temporary appointments to office made, the legislative bodies are authorized to enact resolutions or ordinances providing for emergency interim successors to offices of those governmental units.

(2) The resolutions and ordinances shall not be inconsistent with the provisions of this subchapter.

(b)(1) The provisions of this subsection shall be applicable to officers of political subdivisions including, but not limited to, cities, towns, villages, townships, and counties, as well as school, fire, power, and drainage districts not included in subsection (a) of this section.

(2)(A) The officers, subject to any regulations which the executive head of the political subdivision may issue, shall designate by title, if feasible, or by named person, emergency interim successors and specify their order of succession.

(B) The officer shall review and revise, as necessary, designations made pursuant to this subchapter to ensure their current status.

(C) The officer will designate a sufficient number of persons so that there will be not less than three (3) nor more than seven (7) deputies or emergency interim successors or any combination thereof, at any time.

(3)(A) In the event that any officer of any political subdivision or his or her deputy provided for pursuant to law is unavailable, the powers of the office shall be exercised, and the duties shall be discharged, by his or her designated emergency interim successors in the order specified.

(B) The emergency interim successor shall exercise the powers and discharge the duties of the office to which designated until such time as a vacancy which may exist shall be filled in accordance with the

Arkansas Constitution or statutes or until the officer, or his or her deputy or a preceding emergency interim successor, again becomes available to exercise the powers and discharge the duties of his or her office.

History. Acts 1961, No. 489, §§ 6, 7;
A.S.A. 1947, §§ 12-119, 12-120.

21-1-307. Special emergency judges.

(a) In the event that any judge of any court is unavailable to exercise the powers and discharge the duties of his or her office and in the event no other judge authorized to act in the event of absence, disability, or vacancy or no special judge appointed in accordance with the provisions of the Arkansas Constitution or statutes is available to exercise the powers and discharge the duties of the office, the duties of the office shall be discharged and the powers exercised by the special emergency judges provided for in this section.

(b)(1) The Governor shall designate, for each member of the Supreme Court, special emergency justices in the number of not less than three (3) nor more than seven (7) for each member of the court and shall specify the order of their succession.

(2) For each court of record except the Supreme Court, the Chief Justice of the Supreme Court in consultation with the other members of the court shall designate special emergency judges in the number of not less than three (3) nor more than seven (7) for each judge of the courts and shall specify the order of their succession.

(3) The judge of the circuit court shall designate not less than three (3) special emergency judges for courts not of record within that circuit and shall specify their order of succession.

(4) The designating authority shall review and revise, as necessary, designations made pursuant to this subchapter to ensure their current status.

(c)(1) The special emergency judges shall, in the order specified, exercise the powers and discharge the duties of the office in case of the unavailability of the regular judge or judges or persons immediately preceding them in the designation.

(2) The special emergency judges shall discharge the duties and exercise the powers of the office until such time as a vacancy which may exist shall be filled in accordance with the Arkansas Constitution and statutes or until the regular judge or one preceding the designee in the order of succession becomes available to exercise the powers and discharge the duties of the office.

History. Acts 1961, No. 489, § 8;
A.S.A. 1947, § 12-121.

21-1-308. Formalities of taking office.

(a) At the time of their designation, emergency interim successors and special emergency judges shall take any oath which may be required for them to exercise the powers and discharge the duties of the office to which they may succeed.

(b) Notwithstanding any other provision of law, no person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he or she succeeds, shall be required to comply with any other provision of law relative to taking office.

History. Acts 1961, No. 489, § 9;
A.S.A. 1947, § 12-122.

21-1-309. Period in which authority may be exercised.

(a) Officials authorized to act as Governor pursuant to this subchapter, emergency interim successors, and special emergency judges are empowered to exercise the powers and discharge the duties of an office as authorized in this subchapter only after an attack upon the United States, as defined in this subchapter, has occurred.

(b) At any time, the General Assembly by concurrent resolution may terminate the authority of emergency interim successors and special emergency judges to exercise the powers and discharge the duties of office as provided in this subchapter.

History. Acts 1961, No. 489, § 10;
A.S.A. 1947, § 12-123.

21-1-310. Removal of designees.

Until such time as the persons designated as emergency interim successors or special emergency judges are authorized to exercise the powers and discharge the duties of an office in accordance with this subchapter, including § 21-1-309, those persons shall serve in their designated capacities at the pleasure of the designating authority and may be removed or replaced by the designating authority at any time, with or without cause.

History. Acts 1961, No. 489, § 11;
A.S.A. 1947, § 12-124.

21-1-311. Disputes.

Any dispute concerning a question of fact arising under this subchapter with respect to an office in the executive branch of the state government, except a dispute of fact relative to the Office of Governor, shall be adjudicated by the Governor or other official authorized under the Arkansas Constitution and this subchapter to exercise the powers and discharge the duties of the Office of Governor, and his or her decision shall be final.

History. Acts 1961, No. 489, § 12;
A.S.A. 1947, § 12-125.

SUBCHAPTER 4 — CONSTITUTIONAL OFFICERS AND THEIR SPOUSES

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21-1-402. Restrictions on other employment.

21-1-403. Restrictions on lease agreements, contracts, and grants.

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21-1-405. Violations.

21-1-406. Venue for violation proceedings.

21-1-407. Employment by state agency.

21-1-408. Investigation of violations.

Effective Dates. Acts 1999, No. 34, § 12: Feb. 9, 1999. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an immediate need to establish restrictions and procedures regarding constitutional officers becoming employees of the state or entering into grants, contracts or leases with the state; that this act establishes those restrictions and procedures; and that this act should go into effect as soon as possible to help restore the public confidence in state government. Therefore, an

emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

21-1-401. Definitions.

For purposes of this subchapter:

(1) "Constitutional officer" means Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Attorney General, Commissioner of State Lands, Auditor of State, member of the Arkansas House of Representatives, and member of the Arkansas Senate; and

(2) "State agency" means every board, commission, department, division, institution, and other office of state government whether located within the legislative, executive, or judicial branch of government and including state-supported colleges and universities.

History. Acts 1999, No. 34, § 1.

21-1-402. Restrictions on other employment.

(a)(1) Subject to any restrictions or conditions prescribed by the Arkansas Constitution and unless the person resigns prior to entering into the employment, no person elected to a constitutional office may, after being elected to the constitutional office and during the term for which elected, enter into employment with:

(A) Any state agency;

(B) Any public school district of this state in a noncertified position;

(C) Any vocational education school funded by the state;

(D) Any education service cooperative; or

(E) The Cooperative Education Services Coordinating Council [abolished].

(2) Subject to any restrictions or conditions prescribed by the Arkansas Constitution, any constitutional officer who was employed by a state agency prior to being elected a constitutional officer may continue the employment, but the employment shall not thereafter be reclassified unless it is the result of a general reclassification affecting all positions of the class and grade equally, nor shall the constitutional officer receive any pay increase for that employment other than the cost-of-living increases authorized by the General Assembly without the prior approval of the Joint Budget Committee during legislative sessions, the Legislative Council between legislative sessions, and the Governor.

(b) No person whose spouse is elected to a constitutional office may, after the spouse is elected to the constitutional office and during the term for which the spouse is elected, enter into employment with any state agency without the prior approval of the Joint Budget Committee during legislative sessions, the Legislative Council between legislative sessions, and the Governor.

(c) This subchapter does not prohibit the spouse of any constitutional officer from being elected and serving in an elected office or from being appointed to fill the vacancy in any elected office.

(d) Any person who was employed by a state agency prior to the person's spouse being elected a constitutional officer and any person who entered into employment with a state agency during the spouse's service as a constitutional officer is subject to the following:

(1) The person's position shall not thereafter be reclassified unless it is the result of a general reclassification affecting all positions of the class and grade equally nor shall the person, while the spouse serves as a constitutional officer or within two (2) years after the spouse leaves office, be promoted or transferred without the prior approval of the Joint Budget Committee during legislative sessions, the Legislative Council between legislative sessions, and the Governor; and

(2) The person shall not receive any pay increase in excess of fifteen percent (15%) without the prior approval of the Joint Budget Committee during legislative sessions, the Legislative Council between legislative sessions, and the Governor.

(e) Former members of the General Assembly and their spouses shall not be eligible to be employed by any state agency within twenty-four (24) months after the legislator leaves office in any job or position that:

(1) Was newly created by legislative action within the twenty-four (24) months prior to the legislator's leaving office; or

(2) Had a maximum salary level increase of more than fifteen percent (15%) authorized by legislative action within the twenty-four (24) months prior to the legislator's leaving office.

(f) A former member of the General Assembly shall not be eligible to be registered as a lobbyist under § 21-8-601 et seq. until the expiration of the term of office for which he or she was elected.

History. Acts 1999, No. 34, § 2; 2003, No. 1453, § 1.

A.C.R.C. Notes. The Cooperative Education Services Coordinating Council referred to in subdivision (a)(1)(E) was created by Acts 1997, No. 1362, § 34,

formerly codified at § 6-13-1024. Section 6-13-1024 was repealed by Acts 1999, No. 148, § 3.

Amendments. The 2003 amendment added (f).

21-1-403. Restrictions on lease agreements, contracts, and grants.

(a) No constitutional officer may enter into any lease agreement, contract, or grant with any state agency unless:

(1) The lease agreement, contract, or grant is awarded as a result of competitive bidding or a request for proposal and the constitutional officer played no role, directly or indirectly, in the administrative:

(A) Determination of specifications for the bid or request for proposal;

(B) Evaluation or consideration of bid or request for proposal; or

(C) Decision to accept the bid or request for proposal; or

(2) If competitive bidding or a request for proposal was not required by law, the lease agreement, contract, or grant has received the prior approval of:

(A) The Joint Budget Committee during legislative sessions or the Legislative Council between legislative sessions; and

(B) The Governor.

(b) No constitutional officer may receive any subgrant, subcontract, or assignment of any lease with a state agency unless the constitutional officer:

(1) Is disclosed as a subgrantee or subcontractor in the competitive bid or request for proposal; or

(2) If competitive bidding or a request for proposal was not required by law, receives prior approval from:

(A) The Joint Budget Committee during legislative sessions or the Legislative Council between legislative sessions; and

(B) The Governor.

(c)(1) Constitutional officers shall not enter into professional and consultant services contracts with state agencies subject to §§ 19-11-1001 — 19-11-1011.

(2) Any professional and consultant services contracts obtained by constitutional officers or their spouses with any state agency exempt from §§ 19-11-1001 — 19-11-1011 must receive prior review of the Joint Budget Committee during legislative sessions and the Legislative Council between legislative sessions.

(d) The restrictions of subsections (a) and (b) of this section also apply to spouses of constitutional officers and to any corporation, limited liability company, partnership, or any other legal entity of

which a constitutional officer or the constitutional officer's spouse has an ownership interest of at least ten percent (10%).

(e) If a constitutional officer, a constitutional officer's spouse, or an entity listed in subsection (d) of this section becomes the recipient of a grant, contract, or lease through competitive bidding or a request for proposal, the awarding state agency shall give written notice of the selection of the constitutional officer, constitutional officer's spouse, or entity to:

(1) The Joint Budget Committee during legislative sessions or the Legislative Council between legislative sessions; and

(2) The Governor.

(f) Grants, contracts, and leases entered into prior to the person's becoming a constitutional officer are not subject to the provisions of this section, but renewals and extensions of those grants, contracts, and leases are subject to the provisions of this section.

History. Acts 1999, No. 34, § 3; 2003, No. 1315, § 14.

Amendments. The 2003 amendment rewrote (c).

21-1-404. Rules and regulations — Disclosure statement.

(a) The Director of the Department of Finance and Administration is authorized to promulgate and implement any necessary rules, regulations, or policies to ensure compliance with this subchapter subject to the prior review and approval of the Joint Budget Committee during legislative sessions and the Legislative Council between legislative sessions.

(b) All disclosure statements and other information required to be furnished by constitutional officers and their spouses shall be certified by the constitutional officer or spouse under penalty of perjury.

History. Acts 1999, No. 34, § 4.

21-1-405. Violations.

(a) Any willful and knowing violation of this subchapter shall constitute a Class D felony.

(b) The violation of any rule, regulation, or policy promulgated by the Department of Finance and Administration under this subchapter or the failure of a constitutional officer or spouse of a constitutional officer to disclose his or her interest in any contract, grant, or lease agreement or in any subcontract, subgrant, or assignment of lease as required by this subchapter or as required by any rule, regulation, or policy of the department shall be grounds for voiding the contract, grant, lease agreement, subcontract, subgrant, or lease assignment, and the constitutional officer or spouse may be required to refund any moneys received thereunder.

History. Acts 1999, No. 34, § 5.

21-1-406. Venue for violation proceedings.

The venue for the judicial proceedings for violating § 21-1-405(a) shall be in the county of the defendant's domicile.

History. Acts 1999, No. 34, § 6.

21-1-407. Employment by state agency.

A person whose spouse is elected to a constitutional office may be employed by a state agency without the approval of the employment required by § 21-1-402(b) if the person's entry salary does not exceed the amount prescribed by Level 4 of Grade 13 of the state compensation plan found in § 21-5-209.

History. Acts 1999, No. 34, § 7.

21-1-408. Investigation of violations.

(a) The Arkansas Ethics Commission is authorized to investigate any complaints or allegations of violations of the provisions of this subchapter and to make findings thereon.

(b) In the investigation of such matters, the commission is specifically given all authority and powers as granted to it under the provisions of §§ 7-6-217 and 7-6-218.

History. Acts 1999, No. 34, § 8.

SUBCHAPTER 5 — PUBLIC EMPLOYEES' POLITICAL FREEDOM ACT OF 1999**SECTION.**

21-1-501. Title.

21-1-502. Definitions.

SECTION.

21-1-503. Employer not to penalize employee's political activity.

21-1-501. Title.

This subchapter shall create the "Public Employees' Political Freedom Act of 1999".

History. Acts 1999, No. 658, § 1.

21-1-502. Definitions.

(a) For purposes of this subchapter:

(1) "Elected public official" means the Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, Commissioner of State Lands, member of the Senate, and member of the House of Representatives;

(2) "Public employee" means any person providing services for the State of Arkansas, counties, municipal corporations, or other political subdivision of this state for which compensation is paid; and

(3) "Public employer" means the State of Arkansas and each political subdivision thereof, as defined in § 21-5-603(b).

(b) A public employee shall not be prohibited from communicating with an elected public official concerning matters related to the public employee's job, except for matters exempted under § 25-19-105.

History. Acts 1999, No. 658, § 2.

21-1-503. Employer not to penalize employee's political activity.

(a) It shall be unlawful for any public employer to discipline, to threaten to discipline, to reprimand, either orally or in writing, or to place any notation in a public employee's personnel file disciplining or reprimanding the employee, or otherwise to discriminate against a public employee because the public employee exercised the right to communicate with an elected public official as granted under this subchapter.

(b) Any person willfully violating the provisions of this subchapter shall be deemed guilty of a Class A misdemeanor.

(c) A public employer shall not be prohibited from disciplining an employee who has intentionally made untrue allegations to an elected official concerning matters related to the public employee's job.

History. Acts 1999, No. 658, § 3.

SUBCHAPTER 6 — ARKANSAS WHISTLE-BLOWER ACT

SECTION.

21-1-601. Title.

21-1-602. Definitions.

21-1-603. Public employer conduct prohibited — Good faith communication.

21-1-604. Civil liability.

SECTION.

21-1-605. Remedies.

21-1-606. Attorney's fees.

21-1-607. Protection of confidentiality.

21-1-608. Notification of rights.

21-1-609. Severability of subchapter.

21-1-601. Title.

This subchapter shall be known and may be cited as the "Arkansas Whistle-Blower Act".

History. Acts 1999, No. 1523, § 1.

21-1-602. Definitions.

As used in this subchapter:

(1) "Adverse action" means to discharge, threaten, or otherwise discriminate or retaliate against a public employee in any manner that affects the employee's employment, including compensation, job location, rights, immunities, promotions, or privileges;

(2)(A) "Appropriate authority" means:

(i) A state, county, or municipal government department, agency, or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste; or

(ii) A member, officer, agent, investigator, auditor, representative or supervisory employee of the body, agency, or organization.

(B) "Appropriate authority" includes, but is not limited to, the office of the Attorney General, the office of the Auditor of State, the Arkansas Ethics Commission, the Legislative Joint Auditing Committee and the Division of Legislative Audit, and the offices of the various prosecuting attorneys having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or waste;

(3) "Communicate" means to give a verbal or written report to an appropriate authority;

(4) "Public employee" means a person who performs a full or part-time service for wages, salary, or other remuneration for a public employer;

(5) "Public employer" means any of the following:

(A) An agency, department, board, commission, division, office, bureau, council, authority, or other instrumentality of the State of Arkansas, including the offices of the various Arkansas elected constitutional officers and the General Assembly and its agencies, bureaus, and divisions;

(B) A state-supported college, university, technical college, community college or other institution of higher education, or department, division, or agency of a state institution of higher education;

(C) The Supreme Court, Court of Appeals, the Administrative Office of the Courts, the circuit courts, and prosecuting attorneys' offices;

(D) An office, department, commission, council, agency, board, bureau, committee, corporation, or other instrumentality of a county government or a municipality, or a district court, a county subordinate service district, a municipally owned utility, or a regional or joint governing body of one (1) or more counties or municipalities; or

(E) A county board of education or a public school district, school, or an office or department of a public school district in Arkansas;

(6) "Violation" means an infraction or a breach which is not of a merely technical or minimal nature of a state statute or regulation, of a political subdivision ordinance or regulation, or of a code of conduct or code of ethics designed to protect the interest of the public or a public employer;

(7) "Waste" means a public employer's conduct or omissions which result in substantial abuse, misuse, destruction, or loss of public funds, property, or manpower belonging to or derived from state or local political subdivision's resources; and

(8) "Whistle-blower" means a person who witnesses or has evidence of a waste or violation while employed with a public employer and who communicates in good faith or testifies to the waste or violation, verbally or in writing, to one of the employee's superiors, to an agent of the public employer, or to an appropriate authority, provided that the communication is made prior to any adverse action by the employer.

History. Acts 1999, No. 1523, § 2.

21-1-603. Public employer conduct prohibited — Good faith communication.

(a)(1) A public employer shall not take adverse action against a public employee because the public employee or a person authorized to act on behalf of the public employee communicates in good faith to an appropriate authority:

(A) The existence of waste of public funds, property, or manpower, including federal funds, property, or manpower administered or controlled by a public employer; or

(B) A violation or suspected violation of a law, rule, or regulation adopted under the law of this state or a political subdivision of the state.

(2) The communication shall be made at a time and in a manner which gives the public employer reasonable notice of need to correct the waste or violation.

(b)(1) For purposes of subsection (a) of this section, a public employee communicates in good faith if there is a reasonable basis in fact for the communication of the existence of waste or of a violation.

(2) Good faith is lacking when the public employee does not have personal knowledge of a factual basis for the communication or when the public employee knew or reasonably should have known that the communication of the waste or of the violation was malicious, false, or frivolous.

(c) A public employer shall not take an adverse action against a public employee because the employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review.

(d) A public employer shall not take an adverse action against a public employee because an employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law or a rule or regulation adopted under the authority of laws of the state or a political subdivision of the state.

History. Acts 1999, No. 1523, § 3; 2003, No. 601, § 1.

Amendments. The 2003 amendment added the subdivision designations in (a); in present (a)(1), inserted “public” preceding the third occurrence of “employee” and added “to an appropriate authority” at the

end; in present (a)(1)(A), substituted “including” for “excluding” and inserted “administered or controlled by a public employer”; and deleted “to an appropriate authority” from the end of present (a)(1)(B).

21-1-604. Civil liability.

(a) A public employee who alleges a violation of this subchapter may bring a civil action for appropriate injunctive relief or actual damages, or both, within one hundred eighty (180) calendar days after the occurrence of the alleged violation of this subchapter.

(b) An action commenced under this section may be brought in the circuit court for the county where the alleged violation occurred, for the county where the complainant resides, or in the Pulaski County Circuit Court if the complaint is filed against an agency, department, or institution of state government.

(c) To prevail in an action brought under the authority of this section, the public employee shall establish, by a preponderance of the evidence, that the employee has suffered an adverse action because the employee or a person acting on his or her behalf engaged or intended to engage in an activity protected under this subchapter.

(d) As used in this section, “damages” means damages for a job-related injury or loss caused by each violation of this subchapter, including, but not limited to, fringe benefits, retirement service credit, compensation for lost wages, benefits, and any other remuneration, and reasonable court costs and attorneys’ fees.

(e)(1) A public employer shall have an affirmative defense to a civil action brought by a public employee under this subchapter if the adverse action taken against a public employee was due to employee misconduct, poor job performance, or a reduction in workforce unrelated to a communication made pursuant to § 21-1-603.

(2) The public employer must prove the existence of the public employee’s misconduct unrelated to the communication by a preponderance of the evidence.

(f)(1) In the event the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration implements an employee grievance mediation program, a public employee or public employer may voluntarily participate in mediation under the office’s mediation program if either one wishes to resolve a dispute between them that involves an adverse action taken against the public employee.

(2) Voluntary mediation shall occur before a civil action in which the public employee and public employer are parties has been initiated in a court.

(3) The Director of the Department of Finance and Administration shall adopt voluntary mediation application and request forms.

History. Acts 1999, No. 1523, § 4.

21-1-605. Remedies.

A court in rendering judgment under this subchapter may order any or all of the following remedies:

(1) An injunction to restrain continued violation of the provisions of this subchapter;

(2) The reinstatement of the public employee to the same position held before the adverse action or to an equivalent position;

(3) The reinstatement of full fringe benefits and retirement service credit;

(4) The compensation for lost wages, benefits, and any other remuneration;

(5) The payment by the public employer of reasonable court costs and attorney's fees.

History. Acts 1999, No. 1523, § 5.

21-1-606. Attorney's fees.

(a) A court may order that reasonable attorney's fees and court costs be awarded to an employer if the court determines that an action brought by a public employee under this subchapter is without basis in law or fact.

(b) A public employee shall not be assessed attorney's fees under this section if, after exercising reasonable and diligent efforts after filing the suit, the public employee files a voluntary nonsuit concerning the employer within sixty (60) calendar days after determining that the employer would not be liable for damages.

History. Acts 1999, No. 1523, § 6.

21-1-607. Protection of confidentiality.

This subchapter shall not be construed to permit a disclosure which would diminish or impair the rights of any person or any public official to the continued protection of confidentiality of records or working papers where a statute or the common law provides for protection.

History. Acts 1999, No. 1523, § 7.

21-1-608. Notification of rights.

A public employer shall use appropriate means to notify its public employees of their protection and obligations under this subchapter.

History. Acts 1999, No. 1523, § 8.

21-1-609. Severability of subchapter.

In the event any provision of this subchapter regarding the remedies or damages for public employees in §§ 21-1-604, 21-1-605, or 21-1-606 is held to be invalid, the invalidity shall not affect the other provisions of this subchapter which offer protection to public employees from adverse actions by public employers, and to this end the provisions of this subchapter are declared to be severable.

History. Acts 1999, No. 1523, § 9.

CHAPTER 2

COMMISSION, OATH, AND BOND

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. SCHOOL DISTRICT PUBLIC EMPLOYEES BLANKET BOND PROGRAM. [REPEALED.]
3. MUNICIPAL PUBLIC EMPLOYEES BLANKET BOND PROGRAM. [REPEALED.]
4. COUNTY PUBLIC EMPLOYEES BLANKET BOND PROGRAM. [REPEALED.]
5. STATE PUBLIC EMPLOYEES BLANKET BOND PROGRAM. [REPEALED.]
6. PUBLIC EMPLOYEES BLANKET BOND PROGRAM. [REPEALED.]
7. SELF-INSURED FIDELITY BOND PROGRAM.

RESEARCH REFERENCES

Am. Jur. 63C Am. Jur. 2d, Pub. Off., § 123 et seq. **C.J.S.** 67 C.J.S., Officers, § 57 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 21-2-101. Officers commissioned by Governor.
- 21-2-102. Commission fee and duplicate oath to be forwarded to Secretary of State.
- 21-2-103. Sending commission fees directly to Treasurer of State — Issuance of commission.
- 21-2-104. District, county, and township officers — Issuance of commissions — Collection of fees.
- 21-2-105. Administration of oaths generally.
- 21-2-106. Endorsement of oath on commission.

SECTION.

- 21-2-107. Bonds of state, county, and district officers generally.
- 21-2-108. Duration of bond.
- 21-2-109. Payment of premium on bonds.
- 21-2-110. Liability of surety generally.
- 21-2-111. Discharge of sureties on official bonds.
- 21-2-112. Remedy of surety against principal and cosureties.
- 21-2-113. Discrepancies in accounts — Effect on surety.
- 21-2-114. Bond required of people employed by public officials.
- 21-2-115. Persons in armed forces — Oath — Bond.

A.C.R.C. Notes. Provisions of this subchapter concerning bonds may be affected by subchapter 7 of this chapter. Subchapter 7 of this chapter establishes a Self-Insured Fidelity Bond Program for state, county, municipal, and school district officials and employees.

Cross References. Fees for issuing commissions, § 21-6-202.

Form of oath, Ark. Const., Art. 19, § 20.

Recording in recorder's office, § 14-15-402.

Sureties on official bonds, Ark. Const. Amend. 4.

Effective Dates. Acts 1845, § 5, p. 61: effective on passage.

Acts 1875, No. 77, § 53: effective on passage.

Acts 1875 (Adj. Sess.), No. 21, § 3: effective on passage.

Acts 1881, No. 40, § 3: effective on passage.

Acts 1883, No. 50, § 4: effective on passage.

Acts 1899, No. 14, § 2: effective on passage.

Acts 1927, No. 85, § 5: effective on passage.

Acts 1937, No. 329, § 10: Jan. 1, 1939.
Acts 1939, No. 89, § 3: Feb. 15, 1939.

Acts 1945, No. 3, § 4: approved Jan. 17, 1945. Emergency clause provided: "That because many persons of this State are now in the armed forces of the United States and are now located in the various States of the United States, as well as in many foreign countries, and are unable to comply with the technical requirements of the Arkansas laws as to the taking of oaths of office, an emergency is declared to exist and this Act shall be in full force and effect from and after its passage."

Acts 1945, No. 5, § 4: approved Jan. 26, 1945. Emergency clause provided: "Whereas, many officers and officers-elect of the State and county offices in the State of Arkansas are beyond the boundaries of this State and engaged in the military service of the United States and great confusion and difficulty exists on account of the uncertainty as to how the official oath may be taken by such persons and when their bonds may be executed and filed, and whereas it is necessary for the orderly carrying on of the State and County Governments and the preservation of the public peace, health and safety that there be no uncertainty regarding the validity of the official oaths and bonds of such officers, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage."

Acts 1977, No. 531, § 2: Mar. 18, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that it would greatly facilitate the requirements that various public officials take an oath of office for their respective office if the Secretary of State and/or his official designee had the ability and authority to administer said oaths, that it is essential to the proper and efficient administration of state government that said authority designed to grant that authority and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 1023, § 5: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1186 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

21-2-101. Officers commissioned by Governor.

Each Justice of the Supreme Court, judge of a circuit court, presiding judge of a county court, the Secretary of State, the Auditor of State, prosecuting attorney, sheriff, coroner, clerk of a circuit court, county treasurer, county surveyor, notary public, justice of the peace, judge of a district court, mayor of a city or town, and militia officer elected or appointed in this state shall be commissioned by the Governor.

History. Rev. Stat., ch. 27, § 1; C. & M. Dig., § 1428; Pope's Dig., § 1675; Acts 1955, No. 24, § 1; A.S.A. 1947, § 12-201.

Cross References. Issuance of commissions, Ark. Const., Art. 6, § 10.

Officers commissioned by Governor, Ark. Const., Art. 7, § 48.

Secretary of State to attest commissions issued by Governor, § 25-16-403.

CASE NOTES

De Facto Officers.

A commission constitutes one an officer de facto. It is superseded upon the issuance of a commission to another who has been legally elected to fill the office. *State v. Johnson*, 17 Ark. 407 (1856).

What constitutes color of title by election, appointment, or commission is not essential as between other parties to constitute one an officer de facto. *Pierce v. Edington*, 38 Ark. 150 (1881).

21-2-102. Commission fee and duplicate oath to be forwarded to Secretary of State.

(a)(1) With the exception of judges elected at the nonpartisan judicial general election without a runoff, all civil and military state and county officers who are required by law to be commissioned by the Governor are required to forward the legal fee for their commissions to the Secretary of State within sixty (60) days after their election.

(2) All judges elected at the nonpartisan judicial general election without a runoff are required to forward the legal fee for their commissions to the Secretary of State within sixty (60) days after the November general election.

(3) Within fifteen (15) days after the commissions have been received, the officers shall forward their duplicate oaths to the Secretary of State to be recorded and filed in his or her office.

(b)(1) In case any officer, elected or appointed and commissioned by the Governor, shall fail or neglect to apply for or procure his or her commission from the office of the Secretary of State within the time specified in subsection (a) or shall, after the commission has been obtained, fail or neglect to forward to the office of Secretary of State his or her duplicate oath for recordation in that office, within the time specified, then the office to which that person was commissioned shall be deemed vacant.

(2) The Governor, on being satisfied from the official records of the office of the Secretary of State, by reason of any of the causes enumerated in this section, shall proceed to fill the vacancy in the manner provided by law.

History. Acts 1875 (Adj. Sess.), No. 21, §§ 1, 2, p. 22; C. & M. Dig., §§ 1430, 1431; Pope's Dig., §§ 1677, 1678; A.S.A. 1947, §§ 12-202, 12-206; Acts 2003, No. 1298, § 1.

Amendments. The 2003 amendment,

in (a)(1), substituted "With the exception ... and military" for "All" and deleted "both civil and military" following "officers"; added (a)(2); redesignated former (a)(2) as present (a)(3); and made stylistic and gender neutral changes.

CASE NOTES

Constitutionality.

Subsection (a) of this section is constitutional. *Boyett v. Cowling*, 78 Ark. 494, 94 S.W. 682 (1906).

21-2-103. Sending commission fees directly to Treasurer of State — Issuance of commission.

(a) Any officer entitled to a commission may send the fee for the commission to the Treasurer of State, who shall at once execute duplicate receipts for the fee.

(b)(1) The Treasurer of State shall present the receipts to the Auditor of State who shall countersign them and charge the amount therein specified to the Treasurer of State.

(2) The Treasurer of State shall then file one (1) of the receipts with the Auditor of State and the other with the Secretary of State, and the Secretary of State shall immediately forward the commission to the officer.

History. Acts 1883, No. 50, § 3, p. 73;
C. & M. Dig., § 1429; Pope's Dig., § 1676;
A.S.A. 1947, § 12-205.

21-2-104. District, county, and township officers — Issuance of commissions — Collection of fees.

(a)(1) The Secretary of State is authorized, after each general election in this state, and as soon as the full returns of the election in any county are received by him or her, to issue and forward the commissions of all the newly elected district, county, and township officers required by law to be commissioned to the county or circuit clerks of the respective counties for delivery to the person entitled to them.

(2) The clerks shall collect the fees required to be paid for the commissions, before the delivery thereof, and return the fee, or the commissions when default is made, to the Secretary of State.

(3) The Secretary of State shall account for the fee to the State Treasury as directed in § 21-6-202.

(b) It shall be the duty of the county clerk, upon receipt of the commissions from the Secretary of State for the several officers of his or her county, to notify each elected officer of the receipt of the commission and to enter the commission in a well-bound book which shall be kept for that purpose and shall be ruled and divided into columns in the following order:

- (1) Name of officer;
- (2) Title of office;
- (3) Date of commission;
- (4) Date of qualification; and
- (5) Mailing address.

History. Acts 1875, No. 77, § 1, p. 167;
1881, No. 40, §§ 1, 2, p. 73; A.S.A. 1947,
§§ 12-203, 12-204.

21-2-105. Administration of oaths generally.

(a)(1) The Governor shall take the oath of office before one (1) of the justices of the Supreme Court or one (1) of the judges of the circuit courts, the county clerk, or the clerk of the circuit court.

(2) The justices of the Supreme Court and judges of the circuit courts, Secretary of State, Treasurer of State, and Auditor of State shall take their oaths before the Governor or any of the justices of the Supreme Court or one of the judges of the circuit courts, the clerk of the county court, or the clerk of the circuit court.

(3) All other officers, both civil and military, shall take their oaths before the Secretary of State or his or her official designee, any justice or judge, clerk of the county court, clerk of the circuit court, or justice of the peace.

(b) However, if the officer is serving in or with the armed forces of the United States, he or she may take the oath of office before any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the Army, Air Force, or Marine Corps, or ensign or higher in the Navy or Coast Guard.

(c) The oath shall not be rendered invalid by failure to recite a venue or to state the place of execution of the oath, nor is a special form of jurat of affidavit or any authentication thereof required, provided it appears on the instrument that the person taking the oath is a commissioned officer provided for in this section.

History. Rev. Stat., ch. 106, § 1; Acts 1845, § 1, p. 61; C. & M. Dig., § 8074; Pope's Dig., § 10403; Acts 1945, No. 3, § 1; 1977, No. 531, § 1; A.S.A. 1947, § 12-207; Acts 1999, No. 641, § 1.

Amendments. The 1999 amendment inserted "Air Force" in (b); substituted "or" for "nor" in (c); and made minor punctuation changes.

CASE NOTES**Administration by Municipal Court Clerk.**

Although a municipal court clerk can administer oaths under § 16-17-211, subdivision (a)(3) dictates that a municipal judge can only receive his oath of office

from certain designated persons, who do not include a municipal court clerk. *City of Crossett v. Switzer*, 302 Ark. 239, 788 S.W.2d 738 (1990 (decision under prior law)).

21-2-106. Endorsement of oath on commission.

(a) It shall be the duty of every officer administering the oath of office to any officer of this state to endorse the oath on the commission of the officer.

(b) However, if the officer is serving in or with the armed forces of the United States at the time his oath is taken and the oath is taken before a commissioned officer in the manner provided in § 21-2-105, the oath may be attached to the commission of the officer whose oath is taken in lieu of being endorsed thereon.

History. Rev. Stat., ch. 106, § 4; C. & M. Dig., § 8075; Pope's Dig., § 10404; Acts 1945, No. 3, § 2; A.S.A. 1947, § 12-208.

Publisher's Notes. As to validation of oaths taken before January 17, 1945, by persons serving in the armed forces of the United States, see Acts 1945, No. 3, § 3.

21-2-107. Bonds of state, county, and district officers generally.

(a) The official bonds of all state, county, and district officers required by law to furnish official bonds shall be executed by those officials as principal and shall be executed by some surety company authorized to do business in Arkansas as surety.

(b)(1) The official bonds of all state officers covered by subsection (a) of this section shall be filed in the offices of the Secretary of State and the Auditor of State, with the original being filed in the office of the Secretary of State and a true and correct copy thereof filed in the office of the Auditor of State.

(2) The official bonds of all county officers covered by subsection (a) of this section shall be filed in the office of the recorder in the county in which the officers are elected or appointed.

(3) The official bonds of all district officers covered by subsection (a) of this section shall be filed in the office of the recorder of the county in which the district officer resides.

(c) The recorders of the various counties whose duty it is to file the bonds under the provisions of this section, shall maintain a special record book and shall record therein each official bond filed as provided in this section.

(d) When the original of any bond provided for or covered by this section shall be lost or destroyed, the record of the bond provided for in this section shall be deemed the original, and suit may be instituted on the recorded bond.

(e) When any bond is required of any officer as described in subsection (a) of this section, then the Governor, county judge, mayor, or board of directors of the political entity affected may, in their discretion, make an order providing that the State Treasury or the treasury of a county, city, town, or district shall be drawn upon for the purpose of paying, and in such amount as may be necessary to pay, the expenses of premiums of surety bonds required by this section.

(f) This section is cumulative and supplemental to all existing statutes. It shall repeal, alter, or modify them only where in direct conflict therewith.

History. Acts 1937, No. 329, §§ 1-7, 9; 1939, No. 89, § 1; A.S.A. 1947, §§ 12-212 Pope's Dig., §§ 10415-10421, 10423; Acts — 12-219.

CASE NOTES

ANALYSIS

Constitutionality.
Mandatory nature.

Constitutionality.

This section does not offend against constitutional provision relating to sureties on official bonds. *Gower v. Looney*, 199

Ark. 272, 133 S.W.2d 451 (1939).

it was signed by individuals was without validity. Gower v. Looney, 199 Ark. 272, 133 S.W.2d 451 (1939).

Mandatory Nature.

This section is mandatory, and a bond not in compliance with this section in that

21-2-108. Duration of bond.

All official bonds shall be executed for a definite period not to exceed two (2) years.

History. Acts 1975, No. 331, § 3; A.S.A. 1947, § 12-240.

21-2-109. Payment of premium on bonds.

If state, county, or city officials, including officials of incorporated towns, required to give bond for the faithful performance of their duties and the paying over of funds which may come into their hands shall elect to make a corporate surety bond in a guaranty or bonding company authorized to do business within the state, then the state, county, city, or incorporated town, as the case may be, shall pay the premium on the bonds.

History. Acts 1927, No. 85, § 1; Pope's Dig., § 10439; A.S.A. 1947, § 12-220.

21-2-110. Liability of surety generally.

The surety on an official's bond shall be liable for losses or other liabilities covered by the bond which occur within the term to which the bond applies, regardless of when the loss or liability is discovered.

History. Acts 1975, No. 331, § 2; A.S.A. 1947, § 12-239.

21-2-111. Discharge of sureties on official bonds.

(a)(1) Any person bound as surety in any bond given by an officer for the faithful performance of the duties of his office, whether the office is held under an election or an appointment by the laws of the state or by any ordinance or resolution of any municipal corporation in this state, or by appointment by a board of any municipal corporation in this state, may be discharged from all future liability on the official bond upon his or her petition in writing adduced to the court authorized by law to take and approve the official bond.

(2) In the event the bond is not required to be approved by a particular court, then his or her petition in writing shall be adduced to the circuit court of the county in which the bond is given and required to be filed.

(b) The petition shall set forth the facts upon which the application for a discharge is founded and shall be verified by the affidavit of the petitioner.

(c)(1) A notice in writing of the intended application, together with a copy of the petition, shall be personally served on the principal in the bond at least twenty (20) days before the making of the application.

(2) If the principal in the bond has been absent from the state for the period of six (6) months, the publication of notice and petition, for three (3) successive weeks, in some newspaper printed in this state shall be a sufficient service of notice.

(d)(1) The court to whom the petition is addressed shall hear the application and may, on examination thereof, in its discretion, make an order requiring the principal in the bond to give new bond and security for the performance of his or her official duties.

(2) If new bond and security is given, it shall be taken, approved, filed, and recorded in the same manner that the official bond of the officer is required by law to be taken, approved, and recorded.

(3) When a new bond is taken, approved, and filed, it shall immediately operate as a discharge of all the securities on the former bond from all liability arising from any subsequent misconduct or default of the principal therein. The securities on the former bond shall thenceforth be liable on that bond only for breaches thereof which happened prior to the taking, approving, and filing of the new bond.

History. Rev. Stat., ch. 137, §§ 10-16; §§ 8297-8303; Pope's Dig., §§ 10874-10880; A.S.A. 1947, §§ 12-228 — 12-234.

CASE NOTES

ANALYSIS

Guardian's bond.
Scope of discharge.

Guardian's Bond.

This section embraces guardian's bonds, and the securities in those bonds may apply by petition to require the guardian to give a new bond. *Dempsey v. Fenno*, 16 Ark. 491 (1855).

Scope of Discharge.

The county court can discharge the sureties on the bond of the county treasurer and require a new bond, but it cannot discharge the sureties from liabilities already incurred. *Ex parte Talbot*, 32 Ark. 424 (1877).

21-2-112. Remedy of surety against principal and cosureties.

Any person bound as a security in any bond given by an officer to secure the faithful performance of his or her duties, who shall pay any money he or she shall have been liable to pay by reason of the bond, shall have the same right and remedy against the principal and cosureties as are provided in this section and § 21-2-111 against principal and security in bonds, bills, or notes for the payment of money or the delivery of property.

History. Rev. Stat., ch. 137, § 17; C. & M. Dig., § 8304; Pope's Dig., § 10881; A.S.A. 1947, § 12-237.

21-2-113. Discrepancies in accounts — Effect on surety.

(a) If any discrepancies are found in the accounts of an officer, the Auditor of State and the county clerk shall immediately notify the bonding company, and the penalties as prescribed in §§ 26-39-215, 26-39-501, and 26-39-502 shall not apply until sixty (60) days have expired from the official notification.

(b)(1)(A) If the accounts are found to be correct, then, after final settlement has been made, the county clerk shall issue a quietus to the officer and shall forward a copy to the Auditor of State.

(B) Issuance of a quietus shall automatically release bondsmen or sureties of the official from any and all liability on the bond in force for the term or part thereof covered by the final settlement.

(2) However, if any discrepancy is found in the account of the county clerk or circuit clerk, the county judge shall immediately notify the bonding company.

History. Acts 1927, No. 85, § 4; Pope's Dig., § 10443; A.S.A. 1947, § 12-236.

21-2-114. Bond required of people employed by public officials.

Each public official or employee of this state, or political subdivision thereof, who has appointed deputies or employed individuals who handle any funds for the performance of their duties shall bond the deputies and employees in those amounts which he or she deems necessary to indemnify the state or political subdivision for any loss or mishandling of funds by the deputies or employees.

History. Acts 1975, No. 331, § 1; 1975 (Extended Sess., 1976), No. 1186, § 1; A.S.A. 1947, § 12-238; reen. Acts 1987, No. 1023, § 1.

A.C.R.C. Notes. This section was reenacted by Acts 1987, No. 1023, § 1. Acts 1987, No. 834, provided that 1987 legislation reenacting acts passed in the 1976 Extended Session should not repeal any

other 1987 legislation and that such other legislation would be controlling in the event of conflict.

Publisher's Notes. Acts 1987, No. 1023, § 3, provided that nothing in that act shall repeal or supersede Acts 1985, No. 13, or any other law providing for blanket bonding of public officials or public employees.

CASE NOTES

Cited: Dilday v. State, 300 Ark. 249, 778 S.W.2d 618 (1989).

21-2-115. Persons in armed forces — Oath — Bond.

(a) Any person in the armed forces of the United States who has been granted leave of absence under §§ 21-4-301 — 21-4-304, 21-4-305 [repealed], and 21-4-306 — 21-4-313 may take and subscribe the official

oath of office required by the Arkansas Constitution and statutes of this state at any time after his or her election and before he or she enters upon the duties of his or her office, before any officer of this state or of any other state or of the United States or of any foreign country who is authorized to administer oaths.

(b) The person taking and subscribing the official oath of office under the terms of this section must cause the oath of office, together with the attestation thereof, to be filed with the Secretary of State before entering upon the duties of his or her office.

(c) Any of the persons enumerated in subsection (a) of this section who are required by law to enter into a bond for the faithful performance of the duties of the office may execute and file the bond at any time within thirty (30) days after he or she shall have taken the official oath of office. If the bond is not executed and filed within that time, the office shall be deemed and considered vacant.

History. Acts 1945, No. 5, §§ 1-3;
A.S.A. 1947, §§ 12-209 — 12-211.

SUBCHAPTER 2 — SCHOOL DISTRICT PUBLIC EMPLOYEES BLANKET BOND PROGRAM

SECTION.

21-2-201 — 21-2-211. [Repealed.]

21-2-201 — 21-2-211. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1991, No. 188, § 3. The subchapter was derived from the following sources:

21-2-201. Acts 1985, No. 557, § 1;
A.S.A. 1947, § 80-6001.

21-2-202. Acts 1985, No. 557, § 2;
A.S.A. 1947, § 80-6002.

21-2-203. Acts 1985, No. 557, § 9;
A.S.A. 1947, § 80-6009.

21-2-204. Acts 1985, No. 557, §§ 4, 6;
A.S.A. 1947, §§ 80-6004, 80-6006.

21-2-205. Acts 1985, No. 557, § 5;
A.S.A. 1947, § 80-6005.

21-2-206. Acts 1985, No. 557, § 7;
A.S.A. 1947, § 80-6007.

21-2-207. Acts 1985, No. 557, § 3;
A.S.A. 1947, § 80-6003.

21-2-208. Acts 1985, No. 557, § 10;
A.S.A. 1947, § 80-6010.

21-2-209. Acts 1985, No. 557, § 11;
A.S.A. 1947, § 80-6011.

21-2-210. Acts 1985, No. 557, § 12;
A.S.A. 1947, § 80-6012.

21-2-211. Acts 1985, No. 557, § 8; A.S.A.
1947, § 80-6008.

For present law on self-insured fidelity bond programs, see § 21-2-701 et seq.

SUBCHAPTER 3 — MUNICIPAL PUBLIC EMPLOYEES BLANKET BOND PROGRAM

SECTION.

21-2-301 — 21-2-311. [Repealed.]

21-2-301 — 21-2-311. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1991, No. 188, § 3. The subchapter was derived from the following sources:

21-2-301. Acts 1985, No. 5, § 1; A.S.A.
1947, § 19-6101.

21-2-302. Acts 1985, No. 5, § 2; A.S.A.
1947, § 19-6102.

21-2-303. Acts 1985, No. 5, § 9; A.S.A. 1947, § 19-6109.

21-2-304. Acts 1985, No. 5, §§ 4, 6; A.S.A. 1947, §§ 19-6104, 19-6106.

21-2-305. Acts 1985, No. 5, § 5; A.S.A. 1947, § 19-6105.

21-2-306. Acts 1985, No. 5, § 7; A.S.A. 1947, § 19-6107.

21-2-307. Acts 1985, No. 5, § 3; 1985, No. 380, § 2; 1985, No. 396, § 2; A.S.A. 1947, § 19-6103.

21-2-308. Acts 1985, No. 5, § 10; A.S.A. 1947, § 19-6110.

21-2-309. Acts 1985, No. 5, § 11; A.S.A. 1947, § 19-6111.

21-2-310. Acts 1985, No. 5, § 12; A.S.A. 1947, § 19-6112.

21-2-311. Acts 1985, No. 5, § 8; A.S.A. 1947, § 19-6108.

For present law on self-insured fidelity bond programs, see § 21-2-701 et seq.

SUBCHAPTER 4 — COUNTY PUBLIC EMPLOYEES BLANKET BOND PROGRAM

SECTION.

21-2-401 — 21-2-411. [Repealed.]

21-2-401 — 21-2-411. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1991, No. 188, § 3. The subchapter was derived from the following sources:

21-2-401. Acts 1985, No. 4, § 1; A.S.A. 1947, § 17-4301.

21-2-402. Acts 1985, No. 4, § 2; A.S.A. 1947, § 17-4302.

21-2-403. Acts 1985, No. 4, § 9; A.S.A. 1947, § 17-4309.

21-2-404. Acts 1985, No. 4, §§ 4, 6; A.S.A. 1947, §§ 17-4304, 17-4306.

21-2-405. Acts 1985, No. 4, § 5; A.S.A. 1947, § 17-4305.

21-2-406. Acts 1985, No. 4, § 7; A.S.A. 1947, § 17-4307.

21-2-407. Acts 1985, No. 4, § 3; 1985, No. 380, § 1; 1985, No. 396, § 1; A.S.A. 1947, § 17-4303.

21-2-408. Acts 1985, No. 4, § 10; A.S.A. 1947, § 17-4310.

21-2-409. Acts 1985, No. 4, § 11; A.S.A. 1947, § 17-4311.

21-2-410. Acts 1985, No. 4, § 12; A.S.A. 1947, § 17-4312.

21-2-411. Acts 1985, No. 4, § 8; A.S.A. 1947, § 17-4308.

For present law regarding self-insured fidelity bond programs, see § 21-2-701 et seq.

SUBCHAPTER 5 — STATE PUBLIC EMPLOYEES BLANKET BOND PROGRAM

SECTION.

21-2-501 — 21-2-509. [Repealed.]

21-2-501 — 21-2-509. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1991, No. 188, § 3. The subchapter was derived from the following sources:

21-2-501. Acts 1985, No. 286, § 1; A.S.A. 1947, § 12-254.

21-2-502. Acts 1985, No. 286, § 2; A.S.A. 1947, § 12-255.

21-2-503. Acts 1985, No. 286, § 8; A.S.A. 1947, § 12-261.

21-2-504. Acts 1985, No. 286, §§ 3, 5; A.S.A. 1947, §§ 12-256, 12-258.

21-2-505. Acts 1985, No. 286, § 4; A.S.A. 1947, § 12-257.

21-2-506. Acts 1985, No. 286, § 6; A.S.A. 1947, § 12-259.

21-2-507. Acts 1985, No. 286, § 9; A.S.A. 1947, § 12-262.

21-2-508. Acts 1985, No. 286, § 10; A.S.A. 1947, § 12-263.

21-2-509. Acts 1985, No. 286, § 7; A.S.A. 1947, § 12-260.

For present law on self-insured fidelity bond programs, see § 21-2-701 et seq.

SUBCHAPTER 6 — PUBLIC EMPLOYEES BLANKET BOND PROGRAM

SECTION.

21-2-601 — 21-2-613. [Repealed.]

21-2-601 — 21-2-613. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1991, No. 188, § 3. The subchapter was derived from the following sources:

21-2-601. Acts 1985, No. 13, § 1; A.S.A. 1947, § 12-241.

21-2-602. Acts 1985, No. 13, § 2; A.S.A. 1947, § 12-242.

21-2-603. Acts 1985, No. 13, § 9; A.S.A. 1947, § 12-249.

21-2-604. Acts 1985, No. 13, §§ 3, 5; A.S.A. 1947, §§ 12-243, 12-245.

21-2-605. Acts 1985, No. 13, § 4; A.S.A. 1947, § 12-244.

21-2-606. Acts 1985, No. 13, § 6; A.S.A. 1947, § 12-246.

21-2-607. Acts 1985, No. 13, § 12; A.S.A. 1947, § 12-252.

21-2-608. Acts 1985, No. 13, § 8; A.S.A. 1947, § 12-248.

21-2-609. Acts 1985, No. 13, § 11; A.S.A. 1947, § 12-251.

21-2-610. Acts 1985, No. 13, § 8; A.S.A. 1947, § 12-248.

21-2-611. Acts 1985, No. 13, § 13; A.S.A. 1947, § 12-253.

21-2-612. Acts 1985, No. 13, § 7; A.S.A. 1947, § 12-247.

21-2-613. Acts 1985, No. 13, § 10; A.S.A. 1947, § 12-250.

For present law on self-insured fidelity bond programs, see § 21-2-701 et seq.

SUBCHAPTER 7 — SELF-INSURED FIDELITY BOND PROGRAM

SECTION.

21-2-701. Purpose.

21-2-702. Definitions.

21-2-703. Coverage in lieu of statutory bonds.

21-2-704. Establishment — Scope of coverage.

21-2-705. Governmental Bonding Board.

21-2-706. Administration.

21-2-707. Operations and recommendations.

SECTION.

21-2-708. Notice and proof of losses — Investigations — Restitution.

21-2-709. Determination of coverage — Assignment of rights.

21-2-710. Billing certification — Payment and deposit.

21-2-711. Fidelity Bond Trust Fund.

Effective Dates. Acts 1995, No. 339, § 5: Feb. 16, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that financial audits of governmental entities covered by the Self-Insured Fidelity Bond Program are necessary to maintain financial stability of the Self-Insured Fidelity Bond Program. This act is designed to accomplish this purpose for governmental entities or subdivisions thereof participating in the Program which are not audited by Arkansas Legislative Audit; and this act should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate

preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for

the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 208, § 2: Feb. 9, 2001. Emergency clause provided: "It is hereby found and determined by the Eighty-third General Assembly of the State of Arkansas that Arkansas Code 21-2-704 refers to the term 'participating governmental entities' as one defined in Arkansas Code 21-2-702 but there is no definition for this

term in that section, and this causes confusion, hinders the operation of the Governmental Bonding Board and creates uncertainty in how the term is interpreted that can be avoided by defining the term. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 35A Am. Jur. 2d, Fid. Bonds, § 1 et seq.

CASE NOTES

Cited: In re Sutherland, 161 Bankr. Council v. Governmental Bonding Bd., 657 (Bankr. E.D. Ark. 1993); Volunteer 319 Ark. 716, 894 S.W.2d 580 (1995).

21-2-701. Purpose.

It is found and determined that:

(1) The State of Arkansas and the counties, municipalities, and school districts of the State of Arkansas are expending large sums of money each year for premiums on blanket bonds for officers and employees;

(2) Considerable savings might be effected by the establishment of a self-insured fidelity bond program for state officials and employees, county officials and employees, municipal officials and employees, and school district officials and employees;

(3) This subchapter is designed to establish a governmental bonding board to develop a self-insured fidelity bond program for those officials and employees; and

(4) This subchapter is designed to provide that self-insured fidelity bonds would be in lieu of the various blanket bonds which are presently required under this chapter for various officials and employees and to thereby effectuate substantial savings in the cost of blanket bonds for those officials and employees.

History. Acts 1987, No. 728, § 1.

Cross References. Self-Insured Fidelity Bond Program, § 21-2-701 et seq.

CASE NOTES

In General.

The Fidelity Bond Program is designed to cover losses sustained by participating

governmental entities. *Volunteer Council v. Governmental Bonding Bd.*, 319 Ark. 716, 894 S.W.2d 580 (1995).

21-2-702. Definitions.

As used in this subchapter:

(1) "Audit" or "audit report" means an audit or other statutorily allowed financial examination of the books and records;

(2) "Commissioner" means the Insurance Commissioner of the State of Arkansas;

(3) "County" means the county or counties of the State of Arkansas;

(4) "County public official" or "county public employee" means any elected officer of the counties and the employees or deputies of any elected officer, members of the quorum court, and the members of the various county boards and commissions, excluding officials and employees of county hospitals, county nursing homes, and conservation and improvement districts;

(5) "Money" means currency, coins, and bank notes in current use and having a face value and travelers' checks, register checks, and money orders held for sale to the general public;

(6) "Municipal" or "municipality" means the municipalities of the State of Arkansas;

(7) "Municipal public official" or "municipal public employee" means any elected officer of the municipalities and the employees or deputies of any elected officer, specifically including salaried municipal employees of municipally owned utilities, members of the city council, including the mayor, and the members of the various municipal boards and commissions, but excluding officials and employees of municipal hospitals, nursing homes, and improvement districts;

(8) "Participating governmental entity" means those organizations defined in subdivisions (3), (6), (10), and (13) of this section;

(9) "Property other than money and securities" means any tangible property, other than money and securities, that has intrinsic value;

(10) "School district" means the school districts of the State of Arkansas;

(11) "School district public official" or "school district public employee" means all school district salaried officials and salaried school district employees, whether elected or appointed, and the members of local school boards of directors;

(12) "Securities" means negotiable and nonnegotiable instruments or contracts representing either money or other property and includes:

(A) Tokens, tickets, and revenue and other stamps in current use whether represented by actual stamps or unused value in a meter; and

(B) Evidences of debt, other than money, issued in connection with credit or charge cards;

(13) "State" means the State of Arkansas;

(14) "State officers and employees" means all elected and appointed salaried officials of the state and their salaried state employees, the salaried officials and salaried employees of all state boards and commissions, members of the General Assembly, and nonsalaried appointed members of the various state boards and commissions; and

(15) "State public official" or "state public employee" means any elected or appointed salaried officer of the State of Arkansas and the salaried governmental employees of that elected or appointed officer, members of the General Assembly, and the nonsalaried members of the various state boards and commissions.

History. Acts 1987, No. 728, § 2; 1993, No. 319, § 1; 2001, No. 208, § 1; 2001, No. 1038, § 1. by Nos. 208 and 1038 added present (1) and (8) and placed the remaining subdivisions in alphabetical order.

Amendments. The 2001 amendment

21-2-703. Coverage in lieu of statutory bonds.

(a)(1) The fidelity bond coverage provided under this subchapter shall be in lieu of all statutorily required bonds for the various public officers, officials, and employees participating in the Self-Insured Fidelity Bond Program.

(2) The various laws specifically requiring surety bonds or blanket bonds for the respective public officials, officers, and employees shall not be applicable so long as the fidelity bonds as provided in this subchapter are in effect covering the officials, officers, and employees.

(b) In the event coverage shall cease to be provided for any or all of the officials, officers, or employees pursuant to this subchapter, the laws currently in effect providing for surety bonds or blanket bonds shall again become applicable to the officials, officers, and employees.

History. Acts 1987, No. 728, § 14.

21-2-704. Establishment — Scope of coverage.

(a) There is established a Self-Insured Fidelity Bond Program for state officials and employees, county officials and employees, municipal officials and employees, and school district officials and employees, to be administered by the Governmental Bonding Board.

(b)(1) The fidelity bond coverage provided by the program shall cover actual losses sustained by the participating governmental entities through any fraudulent or dishonest act or acts committed by any of the officials or employees, acting alone or in collusion with others, during the bond period to an amount not exceeding the lesser of three hundred thousand dollars (\$300,000) or the amount of the bond.

(2) Coverage for loss of property other than money and securities shall be limited to the actual cash value of the property on the day the loss was discovered.

(c) This coverage shall not include compensatory, punitive, or exemplary damages, and no interest or penalty amounts shall accrue on bond claims made pursuant to this subchapter including, but not limited to, investigative expenses, legal fees, or court costs.

(d) The fidelity bond coverage provided by the program shall not cover losses sustained by the participating governmental entities as a result of:

(1) Liability imposed upon or assumed by the participating governmental entities to exonerate or indemnify an official or employee from or against liability incurred by the official or employee in the performance of duties;

(2) Damages for which the participating governmental entity is legally liable as a result of:

(A) The deprivation or violation of the civil rights of any person by an official or employee; or

(B) The tortious conduct of an official or employee, except conversion of property of other parties held by the participating governmental entity in any capacity; or

(3) Loss of property other than money and securities unless the participating governmental entity or the Division of Legislative Audit shall be able to designate the specific official or employee causing such loss.

(e) Fidelity bond coverage shall not cover losses sustained by any party other than the participating governmental entities.

(f) Except as provided in subdivision (d)(3) of this section, in case of a loss alleged to have been caused to a participating governmental entity through any fraudulent or dishonest act or acts by an official or employee covered under the fidelity bond coverage afforded under the provisions of this subchapter, where the participating governmental entity or the division shall be unable to designate the specific official or employee causing the loss, the participating governmental entity shall nevertheless have the benefit of fidelity bond coverage.

(g)(1) For valid coverage under the program, each participating governmental entity, including each segment or component thereof for which coverage is available under the program, shall procure an audit of its books and records for each fiscal year.

(2)(A) If a participating entity, or covered segment or component thereof, is not audited by the division, the participating governmental entity, or covered segment or component thereof, shall procure an audit of its books and records by accountants in good standing with the Arkansas State Board of Public Accountancy in accordance with government auditing standards issued by the Comptroller General of the United States.

(B) Such audits must be completed within twenty-four (24) months of the close of each participating entity's fiscal year.

(3) All audit reports revealing or disclosing unauthorized expenditures, asset shortages, or unaccounted-for funds shall be forwarded immediately upon completion to the division, the State Risk Manager, and the appropriate prosecuting attorney.

History. Acts 1987, No. 728, §§ 3-5; 1993, No. 319, § 2; 1995, No. 339, § 1; 2001, No. 1383, § 1.

A.C.R.C. Notes. As enacted by Acts 1995, No. 339, § 1, subdivision (g)(1) ended with: "ending January 1, 1995".

Amendments. The 2001 amendment redesignated former (b)(1) as present (b)(1)(A) and substituted "the lesser of three...amount of the bond" for "three hundred thousand dollars (\$300,000) per occurrence."

CASE NOTES

ANALYSIS

Governmental entity.
Scope of coverage.

Governmental Entity.

The Volunteer Council, Arkadelphia Human Development Center, Inc., a non-profit organization formed to benefit the residents and staff of the Arkadelphia Human Development Center, is not a governmental entity as contemplated by this section. *Volunteer Council v. Governmental Bonding Bd.*, 319 Ark. 716, 894 S.W.2d 580 (1995).

Scope of Coverage.

The Fidelity Bond Program covers only

losses sustained by a participating governmental entity. *Volunteer Council v. Governmental Bonding Bd.*, 319 Ark. 716, 894 S.W.2d 580 (1995).

Subdivision (d)(2)(B) does not provide that fidelity bond coverage shall cover losses sustained by the other parties whose property is converted; rather, the exception provides the fidelity bond coverage shall cover losses of the participating governmental entity under such circumstances. *Volunteer Council v. Governmental Bonding Bd.*, 319 Ark. 716, 894 S.W.2d 580 (1995).

21-2-705. Governmental Bonding Board.

(a) There is created the Governmental Bonding Board, which shall be composed of the following five (5) members:

- (1) The President of the Association of Arkansas Counties;
 - (2) The President of the Arkansas Municipal League;
 - (3) The Director of the Department of Education;
 - (4) The Director of the Department of Finance and Administration;
- and
- (5) The Insurance Commissioner, who shall serve as chair.

(b)(1) The board shall receive no compensation for their services, but members other than the Director of the Department of Education, the Director of the Department of Finance and Administration, and the Insurance Commissioner may receive expense reimbursement in accordance with § 25-16-901 et seq.

(2) The expense reimbursement of members of the board shall be paid by the State Insurance Department from funds specifically appropriated to the State Insurance Department for that purpose or from other funds available to the State Insurance Department for paying expense reimbursement.

(c)(1)(A)(i) The board shall meet at least quarterly.

(ii) However, if there is no proof of losses or other business for the board to consider, the chair may cancel a regularly scheduled quarterly meeting upon written notice to the members.

(B) The board shall also meet at any other time as necessary to carry out its responsibilities and duties, at the call of the chair, or upon the request of a majority of the board.

(2) All action of the board shall be by majority vote of the membership in attendance.

(3) If a board member is unable to attend any board meeting, the member shall appoint a designee to act as his or her representative. The representative shall have all the rights and privileges of the member represented.

History. Acts 1987, No. 728, §§ 6, 7; 1991, No. 188, §§ 1, 2; 1997, No. 250, § 212.

21-2-706. Administration.

It shall be the responsibility of the Governmental Bonding Board to develop and administer the Self-Insured Fidelity Bond Program for state officers and employees, state public officials and public employees, and county, municipal, and school district public officials and public employees.

History. Acts 1987, No. 728, § 8.

21-2-707. Operations and recommendations.

(a) The Insurance Commissioner, at the direction of the Governmental Bonding Board, shall receive and disburse funds necessary for the establishment and operation of the Self-Insured Fidelity Bond Program.

(b) The State Risk Manager shall assist in the operations of the program and shall submit to the board recommendations for the establishment of:

- (1) Premium schedules for all participating governmental entities;
- (2) Schedules for deductible amounts;
- (3) Loss histories, loss reporting, and loss payment procedures;
- (4) Program enrollments;
- (5) Annual review of funds income, balances, and expenditures;
- (6) Proposed invitations to bid, and retention levels, if the board determines that excess bonds or reinsurance is necessary; and
- (7) Other information required by the board for efficient operation of the program.

History. Acts 1987, No. 728, § 10.

21-2-708. Notice and proof of losses — Investigations — Restitution.

(a) It shall be the duty and responsibility of the Legislative Auditor, with the approval of the Legislative Joint Auditing Committee, to give notice and make proof of loss to the board on fidelity bonds on behalf of

any public official, officer, or employee when the audit report of the records of any such official, officer, or employee reflects apparent unauthorized disbursements or unaccounted-for funds or property for which the public official, officer, or employee may be liable.

(b) The Legislative Auditor shall request the appropriate prosecuting attorney or the Attorney General to assist the state or the appropriate political subdivision in obtaining restitution when the audit report reflects apparent unauthorized disbursements or unaccounted-for funds or property for which the public official, officer, or employee may be liable.

(c)(1) For the purpose of obtaining restitution as provided in subsection (b) of this section, the Self-Insured Fidelity Bond Program and the participating governmental entity shall be deemed victims.

(2) In any criminal prosecution against the official or employee causing the loss, where such official or employee enters a plea of guilty or nolo contendere, or is found guilty following a trial, restitution shall be awarded to the participating governmental entity for the entire amount of its unreimbursed losses and to the program for the entire amount of its payment to the participating governmental entity.

History. Acts 1987, No. 728, § 12;
1993, No. 179, § 2; 1993, No. 319, § 3.

CASE NOTES

Effect of Amendments.

This section, relating to the Self-Insured Fidelity Bond Program, under which the Arkansas Fidelity Bond Trust Fund was created, was recently amended

to expressly provide that the Arkansas Fidelity Bond Trust Fund is a victim who is entitled to restitution. In re Sutherland, 161 Bankr. 657 (Bankr. E.D. Ark. 1993).

21-2-709. Determination of coverage — Assignment of rights.

(a)(1) Upon the receipt of the proof of loss from the Legislative Auditor, the Governmental Bonding Board shall determine whether the loss is covered under the Self-Insured Fidelity Bond Program.

(2) If the board determines that the loss is covered under the program, the Insurance Commissioner shall authorize fidelity bond loss payments from the Fidelity Bond Trust Fund to the participating governmental entity on a timely basis.

(3) All vouchers for bond claim payments shall include as supporting documents a copy of the payment recommendation by the State Risk Manager and a copy of the proof of loss from the Legislative Auditor.

(4) Any loss payment may be adjusted by any applicable deductibles, restitution, or coinsurance payments.

(b)(1) Upon fidelity bond loss payment from the fund, the recipients of the loss payment shall, to the extent of the payment, assign to the fund all rights and claims that they may have against the official, officer, or employee involved. The fund shall be subrogated to all of the

rights of the recipients of the fidelity bond loss payment to the extent of the payment.

(2)(A) If the participating governmental entity shall sustain any loss which exceeds the amount of indemnity provided by the program, the governmental entity shall be entitled to all recoveries, except from suretyship, insurance, reinsurance, security, or indemnity taken by or for the benefit of the program, by whomever made, on account of such loss until fully reimbursed, less the amount of the deductible and coinsurance.

(B) Any remainder shall be applied to reimbursement of the program.

(3) If a participating governmental entity fails to pay over amounts due the program under these provisions, the board may deduct any amounts due from future bond loss payments due the applicable participating governmental entity or from any treasury funds of the applicable participating governmental entity.

(c) The commissioner shall timely notify the Legislative Auditor if the board determines that the loss is not covered under the program.

History. Acts 1987, No. 728, § 13;
1993, No. 319, § 4.

CASE NOTES

ANALYSIS

Restitution.
Scope of coverage.

Restitution.

The Arkansas Fidelity Bond Trust Fund, which reimbursed a school district for losses caused by an embezzling employee, was the entity entitled to collect the restitution ordered in the judgment of employee's conviction; the fact that the

statutorily created bond company was required to reimburse the immediate victim does not obviate the economic loss to the state. *In re Sutherland*, 161 Bankr. 657 (Bankr. E.D. Ark. 1993).

Scope of Coverage.

The Fidelity Bond Program covers only losses sustained by a participating governmental entity. *Volunteer Council v. Governmental Bonding Bd.*, 319 Ark. 716, 894 S.W.2d 580 (1995).

21-2-710. Billing certification — Payment and deposit.

(a) The Governmental Bonding Board, with the assistance of the State Insurance Department, shall prepare a billing certification to be remitted to the:

(1)(A) Department of Finance and Administration. Upon receipt of this certification, the Director of the Department of Finance and Administration shall pay it from funds specifically appropriated for it by the General Assembly or from other funds available therefor.

(B) Funds so appropriated for premiums for fidelity bonds for state public officials and employees and state officers and employees or funds otherwise made available for this purpose shall not be subject to reduction as a result of any shortfall of projected revenues; and

(2) Chief Fiscal Officer of the State who shall pay it from funds withheld from the:

(A) County Aid Fund which are due each county participating in the Self-Insured Fidelity Bond Program for premiums for fidelity bonds for county public officials and employees;

(B) Municipal Aid Fund which are due each municipality participating in the program for premiums for fidelity bonds for municipal public officials and employees; and

(C) Public School Fund which are due each school district participating in the program for premiums for fidelity bonds for school district officials and employees.

(b) Upon receipt of these funds, the Insurance Commissioner shall deposit them in the Fidelity Bond Trust Fund.

History. Acts 1987, No. 728, § 11.

A.C.R.C. Notes. Acts 1997, No. 72, § 5, provided: "DFA/Bonds — Billing Procedures. The State Risk Manager of the Department of Insurance shall submit to the the Department of Finance and Administration a separate billing certification of the costs of blanket bond surety premiums for the State of Arkansas and the Counties, Municipalities, and Public School Districts participating in the blanket surety bond program for public employees. Upon receipt of such billing certification, the disbursing officer of the Department of Finance and Administration shall prepare a voucher for paying the surety bond premium and attaching thereto a copy of the billing certification received from the State Risk Manager. The Department of Finance and Administration shall forward a copy of the voucher and supporting documentation for payment of County and Municipal Public Employee Blanket Bond Surety Premiums to the State Treasurer. The State Treasurer shall withhold from the General Revenue Turnback of the County Aid Fund and the Municipal Aid Fund the respective

amount of surety bond premiums for each political jurisdiction participating in the County or Municipal Public Employee Blanket Bond Program. The Department of Finance and Administration shall forward a copy of the voucher and supporting documentation for payment of Public School Employee Blanket Bond Surety Premiums to the Department of Education. The Department of Education shall withhold from the Public School Fund monies accruing to the benefit of each school district participating in the Public School Employees blanket Bond program the respective costs for each school districts' bond surety premium. All state agencies, boards, commissions and institutions of higher education shall reimburse the Miscellaneous Revolving Fund, in such amounts as may be determined by the Chief Fiscal Officer of the State, for payments of blanket bond surety premiums as provided in Section 1 of this Act, by a fund transfer or warrant made payable from the fund from which each state agency, board, commission or institution of higher education receives its financial support."

21-2-711. Fidelity Bond Trust Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a separate fund to be known as the Fidelity Bond Trust Fund.

(b)(1) No money shall be appropriated from this fund for any purpose except for the use and benefit of participating governmental entities for bond claims and for Governmental Bonding Board expenses including, but not limited to, actuarial, consultant, and service contract fees.

(2) The fund shall be administered by and disbursed at the direction of the Governmental Bonding Board.

(c)(1)(A) The assets of the fund may be invested and reinvested as the Governmental Bonding Board may determine with the advice of the State Board of Finance.

(B) All incomes derived through investment of the fund shall be credited, as investment income, to the fund.

(C) For the purposes of investment, fund moneys invested and interest earned thereon shall be administered as trust funds pursuant to the provisions of § 19-3-219(a).

(2) Further, all moneys deposited to the fund shall not be subject to any deduction, tax, levy, or any other type of assessment.

(d) The bond premiums collected by the Governmental Bonding Board under the provisions of this subchapter shall be deposited in the fund.

History. Acts 1987, No. 728, § 9.

CHAPTER 3

RECRUITING, HIRING, AND APPOINTMENT

SUBCHAPTER

1. GENERAL PROVISIONS.
2. AGE DISCRIMINATION.
3. VETERANS PREFERENCES.
4. MERIT SYSTEM BOARD. [REPEALED.]
5. COOPERATIVE EDUCATION PROGRAM.
6. INTERNSHIP PROGRAM.
7. APPRENTICESHIP PROGRAMS. [REPEALED.]
8. EXCEPTIONAL EMPLOYEE RECRUITMENT PROGRAM.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

21-3-101. Equal employment hiring program.

A.C.R.C. Notes. Applicants for employment with the state are subject to selective service registration requirements under § 6-80-104.

21-3-101. Equal employment hiring program.

(a) Every state agency, board, commission, institution of higher education, and every constitutional officer as defined in Arkansas Constitution, Amendment 56, § 1, shall adopt and pursue a comprehensive equal employment hiring program designed to achieve a goal of increasing the percentage of minority employees within the agency, board, commission, institution of higher education, or constitutional office to a level that approximates the percentage of minorities in the state's population.

(b)(1) Every state agency, board, commission, institution of higher education, and constitutional officer shall report to the Legislative Council on June 30 of each year regarding its efforts to achieve its equal employment hiring program goal.

(2) However, the report required of any institution by § 6-63-103 may be used in lieu of the report required under this subsection and shall be filed as provided in this subsection.

History. Acts 1993, No. 426, § 1; 2001, No. 1226, § 1.

Amendments. The 2001 amendment, in (a), substituted “Arkansas Constitution, Amendment 56” for “Constitutional

Amendment 56” and substituted “that approximates” for “which approximates”; and deleted “December 31 and” preceding “June 30” in (b)(1).

SUBCHAPTER 2 — AGE DISCRIMINATION

SECTION.

21-3-201. Definition.

21-3-202. Applicability.

21-3-203. Age discrimination prohibited
— Exceptions.

SECTION.

21-3-204. [Repealed.]

21-3-205. Compulsory retirement of certain employees.

21-3-206. [Expired.]

RESEARCH REFERENCES

UALR L.J. Galchus, Survey of Labor Law, 3 UALR L.J. 251. Palmer v. Arkan-

sas Council On Econ. Educ., 344 Ark. 461, 40 S.W.3d 784 (2001).

CASE NOTES

Sovereign Immunity.

The Age Discrimination Prohibition Act contains no declaration of legislative intent to waive the state’s sovereign immunity, and nothing in this subchapter subjects the state to liability for monetary

damages for violations of this subchapter’s provisions. State v. Goss, 344 Ark. 523, 42 S.W.3d 440 (2001).

Cited: Palmer v. Arkansas Council On Econ. Educ., 344 Ark. 461, 40 S.W.3d 784 (2001).

21-3-201. Definition.

For the purposes of this subchapter, “public employer” means any agency, department, board, commission, bureau, council, institution, or other entity of the state supported by appropriation of state or federal funds, or any county or municipality or other political subdivision of this state. “Public employer” specifically includes public universities, colleges, and public school districts.

History. Acts 1979, No. 25, § 1; A.S.A. 1947, § 12-3501.

21-3-202. Applicability.

The prohibitions in this subchapter shall be limited to individuals who are at least forty (40) years of age.

History. Acts 1979, No. 25, § 5; A.S.A. 1947, § 12-3505; Acts 1989 (3rd Ex. Sess.), No. 33, § 1.

CASE NOTES

ANALYSIS

In general.
Purpose.

In General.

The statute affords no protection for those who have passed their seventieth birthday and they do not have a protectable property interest in continued employment. *Evans v. University of Ark. Bd. of Trustees*, 715 F. Supp. 249 (E.D. Ark. 1989), *aff'd sub nom. Evans v. Pugh*, 902 F.2d 689 (8th Cir. 1990) (decision prior to 1989 amendment).

Purpose.

In this subchapter the Arkansas legislature intended to prohibit age discrimination in public employment against employees under 70 years of age and also to provide public employers the discretion to retain employees who have reached age 70. The statute simply does not afford employees who have reached 70 years of age the same protection that it does younger employees. *Evans v. Pugh*, 902 F.2d 689 (8th Cir. 1990), (decision prior to 1989 amendment).

21-3-203. Age discrimination prohibited — Exceptions.

(a) It shall be unlawful for a public employer to:

(1) Fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment because of the individual's age;

(2) Limit, segregate, or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of the individual's age; or

(3) Reduce the wage rate of any employee in order to comply with this subchapter.

(b) It shall not be unlawful for a public employer to:

(1) Take any action otherwise prohibited by this subchapter where age is a bona fide occupational qualification, reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age; or

(2) Discharge or otherwise discipline an individual for good cause.

History. Acts 1979, No. 25, §§ 2, 3; A.S.A. 1947, §§ 12-3502, 12-3503; Acts 1989 (3rd Ex. Sess.), No. 33, § 1.

CASE NOTES

ANALYSIS

Purpose.
Applicability.
Discretion.

Purpose.

In this subchapter the Arkansas legislature intended to prohibit age discrimination in public employment against employees under 70 years of age and also to provide public employers the discretion to retain employees who have reached age 70. The statute simply does not afford employees who have reached 70 years of age the same protection that it does younger employees. *Evans v. Pugh*, 902 F.2d 689 (8th Cir. 1990), (decision prior to 1989 amendment).

Applicability.

This section affords no protection for those who have passed their seventieth birthday and they do not have a

protectable property interest in continued employment. *Evans v. University of Ark. Bd. of Trustees*, 715 F. Supp. 249 (E.D. Ark. 1989), *aff'd sub nom. Evans v. Pugh*, 902 F.2d 689 (8th Cir. 1990) (decision prior to 1989 amendment).

Discretion.

Although an employee can continue to work beyond the attainment of age 70 if he receives written authorization from the chief administrative officer, the chief administrative officer is not required to give written authorization. Because written authorization is entirely within the discretion of the chief administrative officer, it cannot be said that an employee has a protectable property interest in his continued employment. *Evans v. University of Ark. Bd. of Trustees*, 715 F. Supp. 249 (E.D. Ark. 1989), *aff'd sub nom. Evans v. Pugh*, 902 F.2d 689 (8th Cir. 1990) (decision prior to 1989 amendment).

21-3-204. [Repealed.]

Publisher's Notes. This section, concerning authorization to continue employment, was repealed by Acts 1989 (3rd Ex.

Sess.), No. 33, § 4. The section was derived from Acts 1979, No. 25, § 4; A.S.A. 1947, § 12-3504.

21-3-205. Compulsory retirement of certain employees.

(a)(1) Nothing in this subchapter shall be construed to prohibit compulsory retirement of any employee who has attained sixty-five (65) years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position if the employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, savings, or deferred compensation plan, or any combination of such plans, of the employer of the employee, which equals, in the aggregate, at least forty-four thousand dollars (\$44,000).

(2) In applying the retirement benefit test of subdivision (a)(1) of this subsection, if any such retirement benefit is in a form other than a straight life annuity with no ancillary benefits, or if employees contribute to any such plan or make rollover contributions, that benefit shall be adjusted by the actuary of the employee's public retirement system, so that the benefit is the equivalent of a straight life annuity with no ancillary benefits under a plan to which employees do not contribute and under which no rollover contributions are made.

(b) The prohibitions of this subchapter shall apply to employees with unlimited tenure who retire after July 1, 1982.

History. Acts 1979, No. 25, § 5; A.S.A. 1947, § 12-3505; Acts 1989 (3rd Ex. Sess.), No. 33, § 2.

21-3-206. [Expired.]

Publisher's Notes. This section, concerning exceptions to compulsory retirement, expired pursuant to its own terms

on December 31, 1993. This section was derived from Acts 1989 (3rd Ex. Sess.), No. 33, § 3.

SUBCHAPTER 3 — VETERANS PREFERENCES

SECTION.

21-3-301. Uniform Classification and Compensation Act regulations.

21-3-302. Veterans Preference Law.

21-3-303. Failure to hire disabled veteran.

SECTION.

21-3-304. Reduction in force.

21-3-305. Reemployment.

21-3-306. Rights of reservists.

21-3-301. Uniform Classification and Compensation Act regulations.

Any requirement, rule, or regulation set up for the purpose of selecting employees paid in whole or in part with state funds for positions subject to the Uniform Classification and Compensation Act, § 21-5-201 et seq., shall include regulations under this subchapter.

History. Acts 1947, No. 414, § 1; A.S.A. 1947, § 12-2318; Acts 2003, No. 653, § 1.

Amendments. The 2003 amendment substituted "Uniform Classification and Compensation Act" for "Civil service or merit system" in the section catchline;

deleted "civil service or merit system" preceding "requirement," inserted "for positions...§ 21-5-201 et seq." and substituted "under this subchapter" for "in accordance with §§ 21-3-302 — 21-3-305."

21-3-302. Veterans Preference Law.

(a) This section shall be entitled the "Veterans Preference Law".

(b) For purposes of this section, "veteran" means:

(1) A person honorably discharged from a tour of active duty, other than active duty for training only, with the armed forces of the United States; or

(2) Any person who has served honorably in the National Guard or reserve forces of the United States for a period of at least six (6) years, whether the person has retired or been discharged or not.

(c) In every department or agency of state government or institution of higher education with employee positions subject to the Uniform Classification and Compensation Act, § 21-5-201 et seq., a veteran who voluntarily submits official proof of his or her status as a veteran, disabled veteran, or a surviving spouse of a deceased veteran who remains unmarried at the time the preference is sought and who is a citizen and resident of this state shall be entitled to employment

preference in a position over other applicants after meeting substantially equal qualifications.

(d)(1) If there is an examination, evaluation, or similar instrument given for the purpose of establishing an interview or employment list for such public sector jobs and a person entitled to preference attains a passing grade thereon, he or she shall have five (5) points added to his or her final earned rating if the examination, evaluation, or similar instrument is subject to numerical scoring.

(2) If the examination, evaluation, or similar instrument is not subject to numerical scoring, the selection authority must be able to demonstrate how veterans preference was arrived at in the selection process.

(3) A veteran who established by the records of the federal Department of Veterans Affairs the existence of a service-connected disability, or a veteran who is over fifty-five (55) years of age, disabled, and entitled to a pension or compensation under existing laws, or the spouse of such a veteran, whose disability disqualifies him or her for appointment shall have ten (10) points instead of five (5) points added to his or her final earned rating on the examination, evaluation, or similar instrument.

(e) The qualified veteran's status shall be considered on questions of promotion and retention of employees according to § 21-3-304.

(f) The names of candidates who have qualified in an examination, evaluation, or similar instrument given for the purpose of establishing an interview or employment list shall be entered on an appropriate register or list of eligibles in the following order:

(1) Names of ten-point-preference eligibles shall be placed at the head of the register or applicant list of persons certified as having equal eligibility points;

(2) Names of five-point-preference eligibles shall be placed at the head of the register or applicant list of persons certified as having equal eligibility points; and

(3) Names of all other eligibles who do not have preference as provided in this section shall be placed on the register or applicant list in accordance with their ranking of eligibility points.

(g) The persons entitled to preference shall not be disqualified from holding any position on account of age or by reason of any physical disability, provided that the age or disability does not render the person incapable to perform properly the duties of the position for which he or she applied.

(h) Nothing in this section shall be construed to apply to the position of elective or political appointees in any department, agency, or institution of higher education or to any person holding a strictly confidential administrative or secretarial position in relation to the appointing officer.

History. Acts 1981, No. 527, §§ 1-4; A.S.A. 1947, §§ 12-2322.1 — 12-2322.4; Acts 1995, No. 40, § 1; 2003, No. 653, § 1.

Amendments. The 2003 amendment rewrote this section.

21-3-303. Failure to hire disabled veteran.

(a) If a hiring official passes over the name of any service-connected disabled veteran appearing on an interview or employment list, the hiring official must submit in writing the reason therefor and attach the reason to the employment application.

(b) The written reason shall become a part of the employment application records of the department, agency, or institution of higher education and be retained for the same period of time as all other employment applications as established by law or agency policy.

History. Acts 1947, No. 414, § 3; A.S.A. 1947, § 12-2320; Acts 2003, No. 653, § 1.

Amendments. The 2003 amendment rewrote this section.

21-3-304. Reduction in force.

(a) A department or agency director or institution of higher education president or chancellor may separate any employee without prejudice because of lack of funds, curtailment of work, or in order to permit reinstatement of employees upon their release from periods of military service from the armed forces of the United States.

(b) However, no employee as defined by § 21-5-203 shall be separated while there are emergency, intermittent, temporary, provisional, or probationary employees serving in the same class of position in the same department or agency.

(c)(1) The order of separation due to reduction in force shall be based upon criteria established by the Statewide Workforce Reduction Policy as issued and administered by the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration.

(2) For the purpose of establishing this layoff formula, the veteran's service in the armed forces shall be considered as service with the department or agency and computed as a part of his or her seniority.

History. Acts 1947, No. 414, § 5; A.S.A. 1947, § 12-2322; Acts 2003, No. 653, § 1.

Amendments. The 2003 amendment rewrote this section.

21-3-305. Reemployment.

(a) An employee as defined in § 21-5-203 who has established veterans preference eligibility and has resigned while in good standing or who has been separated without prejudice shall be eligible for reemployment within a period of time no less than the continuous period of his or her service in a department, agency, or institution of higher education, provided that he or she has been certified by the department or agency director or institution of higher education president or chancellor as meeting the current minimum qualifications as to

training and experience of the class of position to which he or she is being reemployed.

(b) Prior to making the minimum qualifications certification, the department or agency director or institution of higher education president or chancellor may require the employee to pass a qualifying examination.

(c) For the purpose of reemployment eligibility under the provisions of this section, time spent in the armed forces shall not be counted.

History. Acts 1947, No. 414, § 4; A.S.A. 1947, § 12-2321; Acts 2003, No. 653, § 1. **Amendments.** The 2003 amendment rewrote this section.

21-3-306. Rights of reservists.

(a) It is declared to be the intent of the General Assembly that any person who holds an other than temporary position in the employ of the State of Arkansas shall not be denied retention in employment or any promotion or other incident or advantage of employment or transferred involuntarily to another position because the person is a member of a reserve component of the armed forces of the United States.

(b) The provisions of the reemployment rights protections of § 12-62-413 and the Uniformed Services Employment and Re-employment Rights Act of 1994 as in effect on January 1, 2003, shall be applicable, and the refusal of any state official to comply therewith shall subject him or her to removal from office.

(c) This section shall be retroactive and shall take effect as of the date of the entry of any state employee into one of the reserve components of the armed forces of the United States.

History. Acts 1973, No. 406, §§ 1-3; A.S.A. 1947, §§ 12-2352 — 12-2354; Acts 2003, No. 653, § 1. **Employment and Re-employment Rights Act of 1994,** referred to in (b), is codified as 38 U.S.C.S. §§ 101 nt and 4301 et seq.

Amendments. The 2003 amendment rewrote (b). **Cross References.** Military leaves for state employees, § 21-4-212.

U.S. Code. The Uniformed Services

SUBCHAPTER 4 — MERIT SYSTEM BOARD

SECTION.

21-3-401 — 21-3-404. [Repealed.]

21-3-401 — 21-3-404. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1989, No. 536, § 6. The subchapter was derived from the following sources:

§ 21-3-401. Acts 1981, No. 693, § 7; A.S.A. 1947, § 12-3907.

§ 21-3-402. Acts 1981, No. 693, §§ 1-4; A.S.A. 1947, §§ 12-3901 — 12-3904.

§ 21-3-403. Acts 1981, No. 693, §§ 3, 5, 6; A.S.A. 1947, §§ 12-3903, 12-3905, 12-3906.

§ 21-3-404. Acts 1981, No. 693, § 5; A.S.A. 1947, § 12-3905.

SUBCHAPTER 5 — COOPERATIVE EDUCATION PROGRAM

SECTION.

- 21-3-501. Policy — Purpose.
- 21-3-502. Definitions.
- 21-3-503. Student employment not restricted.
- 21-3-504. Creation and administration.
- 21-3-505. Arkansas Cooperative Educa-

SECTION.

- tion Advisory Committee.
- 21-3-506. Agency eligibility.
- 21-3-507. Student eligibility.
- 21-3-508. School eligibility.
- 21-3-509. State personnel administrator.

Effective Dates. Acts 1975, No. 551, § 11: Mar. 25, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that a program should be established to provide students attending institutions of higher learning in this State an opportunity to become better informed and more knowledgeable in Arkansas government by working in the various State agencies, departments, and institutions; that the employment of such students would not

only be most beneficial to the student and the agency employing the student but would also encourage graduates of such institutions to remain in the State of Arkansas; that this Act is designed to accomplish this worthy purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

21-3-501. Policy — Purpose.

(a) Recognizing the tremendous potential represented by the young people attending Arkansas institutions of higher education, and in due consideration of the great interest of the people of the State of Arkansas in retaining graduates of Arkansas institutions of higher education within the state, with the further conviction that it is in the best interest of all citizens of the state to recruit and retain qualified college graduates within the State of Arkansas government system, and recognizing the great contribution to the educational process that learning experiences within state government can provide, the General Assembly finds and declares that an affirmative effort to provide college students with employment opportunities within state government is important to the welfare and security of this state and nation and, consequently, is an important public service.

(b) The General Assembly further finds and declares that cooperative education is having, and will continue to have, a major impact on this state in meeting the socially and economically desirable goals of educating and retaining young people within this state.

(c) It is, therefore, the policy of the General Assembly and the purpose of this subchapter to establish a cooperative education program within the State of Arkansas government system to attract and retain qualified personnel from Arkansas institutions of higher education while at the same time contributing to the educational process through learning opportunities within state government.

History. Acts 1975, No. 551, § 1;
A.S.A. 1947, § 12-2355.

21-3-502. Definitions.

For the purposes of this subchapter:

(1) "Academic credit" means the recognized unit requirements which students attending eligible institutions must accomplish in order to receive a degree for completion of a two-year or four-year course of study;

(2) "Arkansas Cooperative Education Advisory Committee" means the committee established by this subchapter to:

(A) Determine the eligibility of educational institutions;

(B) Review the operation of the cooperative education program through periodic meetings;

(C) Make recommendations to the participating institutions, the state personnel administrator, and to the General Assembly; and

(D) Perform all other appropriate functions to provide for the advancement of the cooperative education program;

(3)(A) "Cooperative education" means the process of education which formally integrates the student's academic study with work experience in cooperating employer organizations.

(B) The normal plan is for the student to alternate periods of college study with educational-work experience on assignments which relate to the student's stated career objectives;

(4) "Eligible institutions of higher education" means any public or private two-year or four-year institution of higher education within the State of Arkansas which:

(A) Is accredited by the North Central Association of Colleges and Secondary Schools, a candidate for such accreditation, or gives satisfactory assurance that it has the potential for accreditation and is making progress which, if continued, will result in its achieving accreditation;

(B) Does not discriminate in the admission of students on the basis of race, color, religion, sex, or national origin and is in compliance with the federal Civil Rights Acts of 1964 and 1968 and executive orders issued pursuant thereto; and

(C) Is certified to the state personnel administrator by the Arkansas Cooperative Education Advisory Committee as an eligible institution based on the criteria established in § 21-3-508; and

(5) "State personnel administrator" means the head of the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration, his or her successor, or the person designated by the state personnel administrator to perform the duties assigned to the administrator or to the office.

History. Acts 1975, No. 551, § 2; A.S.A. 1947, § 12-2356.

U.S. Code. The Civil Rights Act of 1964, referred to in this section, is primarily codified as 42 U.S.C. § 2000c et seq. The Civil Rights Act of 1968, referred to in this section, is codified as 18 U.S.C. §§ 231-233, 241, 242, 1153, 2101, 2102, 25

U.S.C. § 1301 et seq., 28 U.S.C. § 1360 nt
and 42 U.S.C. §§ 1973j, 3533, 3535, 3601
— 3619, and 3631.

21-3-503. Student employment not restricted.

Nothing in this subchapter is to be construed as barring or in any way limiting the employment of students within the State of Arkansas governmental system, even though the student is participating in the cooperative education program at an institution of higher education during employment with the State of Arkansas.

History. Acts 1975, No. 551, § 9;
A.S.A. 1947, § 12-2363.

21-3-504. Creation and administration.

There is established a cooperative education program for hiring qualified students from eligible institutions of higher education within the State of Arkansas to be administered by the state personnel administrator and the Arkansas Cooperative Education Advisory Committee, as provided in this subchapter.

History. Acts 1975, No. 551, § 3;
A.S.A. 1947, § 12-2357.

21-3-505. Arkansas Cooperative Education Advisory Committee.

(a) The Governor shall appoint an Arkansas Cooperative Education Advisory Committee to advise and consult with the state personnel administrator in carrying out the administration of this subchapter.

(b) The state personnel administrator shall serve as chair ex officio of the committee, which shall consist of the following:

(1) Four (4) representatives of the state government system, who shall be appointed for terms of four (4) years, except when a member is appointed to complete an unexpired term; and

(2)(A) Five (5) representatives of institutions of higher education appointed from educational institutions with cooperative education or internship programs with the five (5) members selected from the five (5) institutions with the greatest number participating in this program.

(B) Until such time as experience reveals the number of students in the program, three (3) of the five (5) members shall be appointed from public institutions and two (2) from private institutions.

(c)(1) The committee shall meet as frequently as the state personnel administrator deems necessary but not less than semiannually.

(2) Upon request by five (5) or more members of the committee, the state personnel administrator shall immediately call a meeting of the committee.

(d)(1) The committee shall meet to consider and approve by a favorable vote of five (5) or more members present at such meeting the

eligibility of educational institutions having students desirous of applying for the cooperative education program with the state personnel administrator.

(2) Approval shall be considered necessary no more than once every three (3) years and shall be based upon the criteria established in § 21-3-508.

(e) The committee shall further consider, evaluate, and promote cooperative education within the entire system of state government and on the campuses of all eligible institutions of higher education as the committee sees fit.

History. Acts 1975, No. 551, § 8; four representatives of the state government system are arranged so that one
A.S.A. 1947, § 12-2362.

Publisher's Notes. The terms of the term expires every year.

21-3-506. Agency eligibility.

All offices, branches, and agencies within state government shall be eligible to participate in the cooperative education program.

History. Acts 1975, No. 551, § 7;
A.S.A. 1947, § 12-2361.

21-3-507. Student eligibility.

A student shall be eligible for a cooperative education placement upon:

(1) Certification to the state personnel administrator by the student's cooperative education program director or coordinator that the student:

(A) Has completed twenty-four (24) or more college credit hours or their equivalent measure; and

(B) Is presently enrolled as a full-time student or has completed or will complete the equivalent of twelve (12) college or graduate credit hours in the six-month period prior to taking employment under the cooperative education program; and

(2) Completion of all other application procedures required by the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration for the administration of the cooperative education program.

History. Acts 1975, No. 551, § 5;
A.S.A. 1947, § 12-2359.

21-3-508. School eligibility.

In order for any institution of higher education within the State of Arkansas to participate in the cooperative education program, that institution must meet the following criteria, as determined by the Arkansas Cooperative Education Advisory Committee:

(1) The institution has appointed a director or coordinator whose primary responsibility is the direction of that institution's cooperative education program, for which the director or coordinator receives proportionate compensation or released time from instruction or other administrative duties;

(2) The institution will grant academic credit toward the student's degree program for the work period within the Arkansas state government system;

(3) The institution agrees to and does so provide the committee with a written summary of the evaluation made by the institution of the student's educational-work experience within sixty (60) days of the conclusion of that placement period.

History. Acts 1975, No. 551, § 4;
A.S.A. 1947, § 12-2358.

21-3-509. State personnel administrator.

(a) The state personnel administrator shall have the responsibility to administer the cooperative education program.

(b) The duties of the administrator include, but are not limited to:

(1) Disseminating information on the availability of students through the cooperative education program and collecting requests for employment of cooperative education students;

(2) Conveying state job opportunity information to eligible institutions, to include job titles, description of duties in general, and salary and wage information;

(3) Promulgating and collecting application forms;

(4) Conveying final employment and assignment decisions, in total, to all eligible institutions;

(5) Keeping all necessary records both for the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration and, as directed, by the Arkansas Cooperative Education Advisory Committee; and

(6) All other activities necessary to the orderly and lawful administration of this subchapter and not otherwise specifically delegated by this subchapter.

History. Acts 1975, No. 551, § 6;
A.S.A. 1947, § 12-2360.

SUBCHAPTER 6 — INTERNSHIP PROGRAM

SECTION.

21-3-601. Internship program.

Effective Dates. Acts 1971, No. 646, § 6; Apr. 7, 1971. Emergency clause provided: "It is hereby found and determined that it may be necessary to extend the regular session of the Sixty-Eighth General Assembly as authorized in the Con-

stitution; that under the provisions of Amendment 7 to the Constitution, enactments of the General Assembly that do not have an emergency clause do not become effective until ninety (90) days after the date of final adjournment of the General Assembly; that the extended session of the General Assembly may not adjourn in time for this Act to take effect prior to July 1, 1971, thereby depriving the agency for which funds are appropriated herein of necessary operating funds to commence the next fiscal biennium; and in order that the appropriation made herein may be

available on July 1, 1971, the General Assembly hereby determines that the immediate passage of the Act is necessary for the maintenance and operation of the essential governmental services. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval, provided that the appropriation authorized herein shall not be available until July 1, 1971."

21-3-601. Internship program.

(a) The Legislative Council and the Department of Finance and Administration are authorized to establish, for their respective agencies, agreements with institutions of higher learning to utilize highly qualified graduate level students who are seeking a Master of Arts or Master of Public Administration degree in the departments of political science of such institutions to perform duties for their respective agencies.

(b) The program shall be known as an "internship program" through which graduate level students can obtain practical experience in state government.

(c)(1) Students preparing for careers in government shall be given priority in employment under this program.

(2) Only qualified graduate level students who are citizens of the State of Arkansas shall be eligible to receive the benefits of the provisions of this section.

(3) In addition, internship agreements shall be based on the anticipated benefits and services to be rendered to the Legislative Council or the Department of Finance and Administration under the agreement with the institution of higher learning.

(d) All internship agreements entered into under the provisions of this section shall be at such rates as agreed to between the contracting institution of higher learning and the Legislative Council or the Department of Finance and Administration, but shall not exceed two hundred fifty dollars (\$250) per month per student for the time required for the student to complete his or her degree requirements, including the internship work obligations under agreements entered into under the provisions of this section.

(e) No such internship agreement shall be for more than twenty-one (21) months per student.

SUBCHAPTER 7 — APPRENTICESHIP PROGRAMS

SECTION.

21-3-701 — 21-3-703. [Repealed.]

21-3-701 — 21-3-703. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1989, No. 684, § 11. The subchapter was derived from the following sources:

21-3-701. Acts 1987, No. 722, § 1.

21-3-702. Acts 1987, No. 722, § 3.

21-3-703. Acts 1987, No. 722, § 2.

SUBCHAPTER 8 — EXCEPTIONAL EMPLOYEE RECRUITMENT PROGRAM

SECTION.

21-3-801. Title.

SECTION.

21-3-802. Recruitment of retired employees.

21-3-801. Title.

This subchapter shall be known as the "Exceptional Employee Recruitment Program".

History. Acts 1999, No. 1039, § 1.

21-3-802. Recruitment of retired employees.

(a) The Department of Finance and Administration shall promulgate regulations providing for the recruitment of retired members of the Arkansas Public Employees' Retirement System to return to employment for the state.

(b) Before a person recruited under the Exceptional Employee Recruitment Program may be rehired by the state, the proposed employment shall be reviewed by the Legislative Council and approved by the Governor.

(c) The retirement benefits of a person rehired pursuant to this subchapter shall terminate upon reemployment. At the conclusion of the employment, the person shall receive retirement benefits with the additional service computed in his or her retirement benefits.

(d)(1) The actuary of the system shall determine the actuarial cost of the additional retirement benefit attributable to the person's employment under the program.

(2) Upon receiving certification of the cost by the executive director of the Arkansas Public Employees' Retirement System, the Director of the Department of Finance and Administration shall transfer the actuarial cost from the fund of the agency that employed the person under the program to the Arkansas Public Employees' Retirement System Fund.

History. Acts 1999, No. 1039, § 2.

CHAPTER 4

ATTENDANCE AND LEAVE

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. UNIFORM ATTENDANCE AND LEAVE POLICY ACT.
3. MILITARY LEAVE OF ABSENCE.
4. DECEASED EMPLOYEES — PAYMENT FOR ACCRUED LEAVE.
5. FINANCIAL INCENTIVES TO DECREASE USE OF SICK LEAVE.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 21-4-101. Leave of absence for public service.
- 21-4-102. Leave of absence for certain training programs.
- 21-4-103. Service credit for former Office

SECTION.

- of Child Support Enforcement contractors.
- 21-4-104. Leave of absence for emergency and rescue services.

Cross References. Computation of length of service for veterans, § 21-1-101.

Effective Dates. Acts 1953, No. 358, § 2: Mar. 28, 1953. Emergency clause provided: "It being found as a matter of fact by the legislature that certain officials in the State of Arkansas who have been elected to public office and are serving in said office may be injured in their jobs or deprived of their seniority rights by their employers because of their absence from work during the tenure of their office to the great injury and damage to said public officials, an emergency is declared to exist and this act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1957, No. 242, § 2: Mar. 12, 1957. Emergency clause provided: "It being found as a matter of fact by the General Assembly that certain officials in the State of Arkansas who have been elected to public office and are serving in said office may be injured in their jobs or deprived of their seniority rights by their employers because of their absence from work during the tenure of their office to the great injury and damage to said public official, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1957, No. 246, § 3: approved Mar.

12, 1957. Emergency clause provided: "Whereas, it is imperative that the State co-operate with the National Guard, the Reserve components of the Armed Forces and the United States Public Health Service in establishing and carrying out their training programs, and this Act being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage."

Acts 2003, No. 471, § 2: emergency clause failed to pass. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that it is necessary for our homeland defense to have the United States Air Force Auxiliary Civil Air Patrol ready for activation if called upon; and that this act is immediately necessary because if the Civil Air Patrol is not properly prepared, the security of our nation could be compromised. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

21-4-101. Leave of absence for public service.

(a) Any person who is employed by any person, firm, or corporation in the State of Arkansas shall be granted a leave of absence, upon the election of any such employee to a public office in the State of Arkansas, or upon appointment by the Governor of any such person to a board or commission in the State of Arkansas, which office requires the employee's absence from their employment.

(b) The leave of absence shall be for such period as the employee may request, not to exceed the duration of the term of office to which the employee has been elected.

(c) The granting of the leave of absence by the employer shall not be held to impair the employee's seniority rights of the job, nor shall the departmental seniority of the employee be broken for job purposes.

History. Acts 1953, No. 358, § 1; 1957, No. 242, § 1; A.S.A. 1947, § 12-2333.

21-4-102. Leave of absence for certain training programs.

(a)(1) All employees of the state, as defined in § 21-4-203, or of any of its political subdivisions, who desire to take a leave of absence for the purpose of participating in the military training programs made available by the National Guard or any of the reserve branches of the armed forces and all state employees who are members of the Inactive Reserve Corps of the United States Public Health Service who desire to take a leave of absence for the purpose of participating in the civil defense and public health training programs made available by the United States Public Health Service shall be entitled to such a leave of absence for a period of fifteen (15) days plus necessary travel time for annual training requirements or other duties performed in an official duty status in any one (1) calendar year.

(2) To the extent this leave is not used in a calendar year, it will accumulate for use in the succeeding calendar year until it totals fifteen (15) days at the beginning of the calendar year.

(b)(1) Whenever any employee is granted a leave of absence under the provisions of this section, he or she shall be entitled to his or her regular salary during the time he or she is away from his or her duties during such leave of absence.

(2) The leave of absence shall be in addition to the regular vacation time allowed to the employee.

(c)(1) Employees called to duty in emergency situations by the Governor or by the President shall be granted leave with pay not to exceed thirty (30) working days, after which leave without pay will be granted. This leave shall be granted in addition to all other leave the employee shall be entitled to.

(2) "Emergency situations" shall have the same meaning as in § 21-4-212.

(d)(1) During a leave of absence, the employee shall be entitled to preserve all seniority rights, efficiency or performance ratings, promo-

tional status, retirement privileges, life and disability insurance benefits, and any other rights, privileges, and benefits to which they have become entitled.

(2) The period of military service shall, for purposes of computations to determine whether such person may be entitled to retirement benefits, be deemed continuous service and the employee shall not be required to make contributions to any retirement fund.

(3) The state or political subdivision shall continue to contribute its portion of any life or disability insurance premiums during the leave of absence on behalf of the employee, if requested, so that continuous coverage may be maintained.

(e) Whenever any employee of a political subdivision is granted military leave for a period of fifteen (15) days per calendar year or fiscal year under the provisions of this section, the military leave will accumulate for use in succeeding calendar years or fiscal years until it totals fifteen (15) days at the beginning of the calendar year or fiscal year, for a maximum number of military leave days available in any one (1) calendar year or fiscal year to be thirty (30) days.

History. Acts 1949, No. 465, § 1; 1957, No. 246, § 1; A.S.A. 1947, § 12-2332; Acts 1991, No. 673, § 2; 1991, No. 956, § 1.	Publisher's Notes. Acts 1991, No. 956, § 1, is also codified as §§ 6-17-306(d) and 21-4-212(g).
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21-4-103. Service credit for former Office of Child Support Enforcement contractors.

Any employee of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration who was formerly employed by a public contractor with a contract in effect as of January 1, 1998, with the office and who moved from employment with the public contractor to employment with the office without a break in service shall be entitled to credit for service for the time he or she was employed by the contractor for the purpose of establishing eligibility for annual leave accrual and career service awards to the same extent as regular state employees.

History. Acts 1999, No. 882, § 1.

21-4-104. Leave of absence for emergency and rescue services.

(a) All employees of the state, any city of the first class, city of the second class, incorporated town, or any county who are members of the United States Air Force Auxiliary Civil Air Patrol or the United States Coast Guard Auxiliary and desire to take a leave of absence for the purpose of participating in training programs for the Civil Air Patrol or in emergency and rescue services shall be entitled to a leave of absence with pay for a period of fifteen (15) days for that purpose during any one (1) calendar year, if the leave of absence is at the request of the employee's wing commander, the wing commander's designated representative, or Division 15 Captain.

(b)(1) If an employee is granted a leave of absence under this section, the employee shall be entitled to his or her regular salary during the time the employee is away from his or her duties during the leave of absence.

(2) The leave of absence shall be in addition to the regular vacation time allowed to the employee.

(c) During a leave of absence, the employee shall be entitled to preserve:

(1) All seniority rights, efficiency or performance ratings, promotional status, retirement privileges, and life and disability insurance benefits; and

(2) Any other rights, privileges, and benefits to which he or she has become entitled.

(d) For purposes of computations to determine whether the person may be entitled to retirement benefits, the period of the leave of absence shall be deemed continuous service.

(e) The state, city, or county shall continue to contribute its portion of any life or disability insurance premiums during the leave of absence on behalf of the employee, if requested, so that continuous coverage may be maintained.

History. Acts 2003, No. 471, § 1.

SUBCHAPTER 2 — UNIFORM ATTENDANCE AND LEAVE POLICY ACT

SECTION.

21-4-201. Title.

21-4-202. Legislative intent.

21-4-203. Definitions.

21-4-204. Annual leave — Accrual and use.

21-4-205. Annual leave — Unused leave.

21-4-206. Sick leave — When granted.

21-4-207. Sick leave — Accrual and use.

21-4-208. Sick leave — Use in conjunction with workers' compensation.

SECTION.

21-4-209. Maternity leave.

21-4-210. Leave of absence without pay.

21-4-211. Educational leave.

21-4-212. Military leave.

21-4-213. Court and jury leave.

21-4-214. Catastrophic leave program.

21-4-215. Leave for bone marrow or organ donation — Definitions.

A.C.R.C. Notes. References to "this subchapter" in §§ 21-4-201 — 21-4-214 may not apply to § 21-4-215, which was enacted subsequently.

Effective Dates. Acts 1977, No. 664, § 3: July 1, 1977. Emergency clause provided: "It has been found and determined by the General Assembly that proper and effective management and control of state finances and personnel management required that the provisions of this Act be implemented at the commencement of the 1977-79 biennium, therefore an emergency is hereby declared to exist and this

Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1977."

Acts 1979, No. 1077, § 5: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly that it is essential for the State of Arkansas to place the institutions of higher learning under the provisions of the Uniform Attendance and Leave Policy and to provide that the same rules and regulations that apply to other classified positions shall also apply to

these classified positions located in the institutions of higher education. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after July 1, 1979."

Acts 1981, No. 695, § 5: Mar. 24, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law pertaining to compensatory time under the Uniform Attendance and Leave Policy Act is vague and that this Act is immediately necessary to eliminate confusion. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 931, § 7: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly that it is essential for the State of Arkansas to adopt a Uniform Personnel Classification Plan for State Agencies and to provide that essential changes are implemented for the adequate functioning of those State Agencies. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of public peace, health and safety, shall be in full force and effect from and after July 1, 1983."

Acts 1991, Nos. 91 and 169, § 7: Feb. 7, 1991 and Feb. 18, 1991, respectively. Emergency clause provided: "It is hereby found and determined by the General Assembly that the various state agencies should be authorized to establish catastrophic leave bank programs whereby state employees could contribute accrued annual leave and sick leave to the bank so that employees who suffer catastrophic illness could continue to be paid while off work for a length of time in excess of the accrued annual leave and sick leave of the employee; that this Act authorizes the establishment of such programs; and that this Act should be given effect immediately in order to grant the various agencies the power to institute the programs as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the

preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 1044, § 21 and No. 1438, § 10: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1999 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1999 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1999."

Acts 1999, No. 1176, § 8: Apr. 7, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that under the current law relating to the catastrophic leave program for state agency employees and for full-time employees of state institutions of higher education, catastrophic illness is defined as a medical condition of an employee only and does not include medical conditions of members of the employee's immediate family; that many times it is necessary that an employee miss work to care for a seriously ill member of the employee's immediate family; that if the employee has exhausted his or her accrued annual and sick leave and is not permitted to benefit from the catastrophic leave program he or she may suffer a substantial loss of income and serious hardship; that this act is designed to expand the term 'catastrophic illness' as used in the law which establishes the catastrophic leave bank program to include catastrophic illness of a spouse or parent of an employee or of a child of the employee which may be claimed as a dependent under the Arkansas Income Tax Act of 1929 and should be given effect immediately to avoid serious hardship to certain employees of state agencies and of state-supported institutions of higher education. Therefore, an emergency is declared to exist and this act being immedi-

ately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 1438, § 10: July 1, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1999 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1999 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1999.”

Acts 2003, No. 194, § 3: Feb. 21, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that certain state employees with severe illnesses are being

denied time off to deal with those illnesses; that the employees are in dire need of relief from the strict requirements of the catastrophic leave law; that by denying them the time off an unnecessary hardship has befallen those public employees; and that this act is immediately necessary because of the immediate need for time off for those employees. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2003, No. 835, § 5: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the provisions of this act are needed to comply with the federal guidelines concerning uniform attendance and leave policies; that this act should become effective at the beginning of the fiscal year; and that this act is immediately necessary to prevent confusion and uncertainty for state employees. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

21-4-201. Title.

This subchapter may be referred to and cited as the “Uniform Attendance and Leave Policy Act”.

History. Acts 1975, No. 567, § 2; A.S.A. 1947, § 12-2365.

21-4-202. Legislative intent.

It is the purpose and intent of this subchapter to establish a uniform attendance and leave policy for all affected state employees of agencies, boards, and commissions covered by the provisions of this subchapter.

History. Acts 1975, No. 567, § 1; A.S.A. 1947, § 12-2364.

21-4-203. Definitions.

As used in this subchapter:

(1) "Agency head" or "agency director" means the executive head of all agencies, departments, boards, commissions, bureaus, councils, or other agencies of the state;

(2) "Annual leave" means vacation time with pay but shall not include compensatory time;

(3) "Catastrophic illness" means a medical condition, as certified by a physician, of an employee or of the spouse or parent of the employee or of a child of the employee that may be claimed as a dependent under the Arkansas Income Tax Act of 1929, § 26-51-101 et seq., which requires an employee's absence from duty for a prolonged period of time and which, except for the catastrophic leave program, would result in a substantial loss of income to the employee because of the exhaustion of all earned sick and annual leave;

(4) "Catastrophic leave" means leave granted to an employee as a result of a catastrophic illness, upon the employee's exhausting all sick and annual leave;

(5) "Catastrophic leave bank" means a pool of accrued annual leave donated by employees;

(6) "Compensatory time" means time off in lieu of payment for overtime hours;

(7) "Educational leave" means any period of out-service training during which time the employee pursues a regular full-time course of instruction to acquire a specific skill or skills needed;

(8) "Employee" means a person regularly appointed or employed in a position of state service by a state agency, as defined in subdivision (1) of this section, for which he or she is compensated on a full-time basis;

(9) "Probationary employee" means a person certified from a list of eligibles or employed through a work test appointment and serving a probationary period;

(10) "Provisional employee" means a person who has been appointed to fill a position pending the establishment of a register for such position;

(11) "State agencies" means all agencies, departments, boards, commissions, bureaus, councils, state-supported institutions of higher learning, or other agencies except the following excluded agencies or positions within agencies:

(A) The elected constitutional officers of this state and their employees;

(B) The General Assembly and its employees, including employees of the Bureau of Legislative Research and the Division of Legislative Audit;

(C) Members of the Supreme Court, members of the Court of Appeals, the Administrative Office of the Courts, circuit courts, and prosecuting attorneys, but not including deputy prosecuting attorneys;

- (D) The Arkansas State Highway and Transportation Department; and
- (E) All administrative, academic, or other nonclassified employees of the state-supported institutions of higher learning;
- (12) "Temporary employee" means a person who has been appointed from a register for a period of time not to exceed six (6) months;
- (13)(A) "Working day" means all regularly prescribed days of employment in which the employee performs those duties for which he or she was hired.
- (B) For the purposes of this subchapter, a working day shall consist of eight (8) hours; and
- (14) "Years of service" includes the total number of years of employment with all agencies of Arkansas state government whether such employment is continuous or not.

History. Acts 1975, No. 567, § 3; 1979, No. 1077, § 1; 1981, No. 695, §§ 1, 2; A.S.A. 1947, § 12-2366; Acts 1991, No. 91, § 1; 1991, No. 169, § 1; 1999, No. 1044, § 6; 1999, No. 1176, § 3; 1999, No. 1438, § 4; 2001, No. 1553, § 33.

A.C.R.C. Notes. The amendment by Acts 1999, No. 1044, is deemed superseded by the amendment by Acts 1999, No. 1438, pursuant to § 1-2-207. Acts 1999, No. 1044, § 6, amended (1)(C) to read as follows: "Members of the Supreme Court, circuit and chancery courts and prosecuting attorneys, but not including deputy prosecuting attorneys and the Administrative Office of the Courts".

Amendments. The 1999 amendment by No. 1176, in (4), added "or of the spouse or parent ... Tax Act of 1929" and substituted "except for the catastrophic leave program, would result" for "results"; and made stylistic changes.

The 1999 amendment by No. 1438, in (1)(C), inserted "the Administrative Office of the Courts" and substituted "but not including deputy prosecuting attorneys" for "and the Administrative Office of the Courts."

The 2001 amendment substituted "Arkansas Surpreme Court, members of the Arkansas Court of Appeals, the Administrative" for "Supreme Court, the Administrative" in (1)(C).

21-4-204. Annual leave — Accrual and use.

- (a)(1) Except for the employees under subdivision (a)(2) of this section, each permanent or probationary employee shall be entitled to annual leave with full pay computed on the basis of the following schedule for each complete month of service including the probationary period:
- | | |
|---------------------------|-----------------------------|
| Through 3 years | 1 day per month |
| 3 through 5 years | 1 day and 2 hours per month |
| 5 through 12 years | 1 day and 4 hours per month |
| 12 through 20 years | 1 day and 6 hours per month |
| Over 20 years | 1 day and 7 hours per month |
- (2) Each fire and emergency service employee of the State Military Department who works a regularly scheduled shift of more than forty-seven (47) hours per week is entitled to annual leave with full pay computed on the basis of the following schedule for each complete month of service:
- | | |
|-------------------------|-----------------------------|
| Through 3 years | 1 day and 4 hours per month |
| 3 through 5 years | 1 day and 7 hours per month |

5 through 12 years 2 days per month
 12 through 20 years 2 days and 3 hours per month
 Over 20 years 2 days and 5 hours per month

(b) Annual leave with pay shall be allowed to provisional and temporary employees on the basis of one (1) working day for each complete month of service.

(c) Annual leave with pay shall be allowed to permanent, probationary, provisional, and temporary employees who are working one-half ($\frac{1}{2}$) time computed on the basis of one-half ($\frac{1}{2}$) the rate of the schedule for full-time employees for each complete month of service.

(d) Annual leave with pay shall not be granted to emergency, hourly, intermittent, or per diem employees.

(e)(1)(A) Annual leave shall be cumulative. No employee shall have more than thirty (30) days of annual leave accumulated at the end of each calendar year. However, the thirty-day accumulative annual leave may exceed thirty (30) days prior to the end of the calendar year.

(B) No fire or emergency service employee under subdivision (a)(2) of this section shall accumulate annual leave in excess of forty-five (45) days at the end of each calendar year, except that the forty-five-day maximum of cumulative annual leave may exceed forty-five (45) days during the calendar year.

(2) Accumulated annual leave shall be granted by the agency director at such time or times as will least interfere with the efficient operation of the agency.

(3) Employees transferring between state agencies without a break in service shall retain, at the time of transfer, all accumulated annual leave credits.

(4) Change of positions in the annual leave schedule shall be determined on the basis of completed years of service. Seniority for reinstated employees will be brought forward in completed years of service only.

(5) Accrual rates will change on the first day of the month following eligibility for the next higher accrual rate.

(6) Annual leave may not be accumulated during a period of leave without pay when such leave is for ten (10) or more days within a calendar month.

(7) Saturdays, Sundays, holidays, and nonworking days within a period of annual leave shall not be charged as annual leave. Annual leave granted shall be based on working days.

(f)(1) Unearned annual leave shall not be loaned.

(2) The minimum charge for absence on account of annual leave shall be fifteen (15) minutes.

History. Acts 1975, No. 567, § 4; A.S.A. 1947, § 12-2367; Acts 1997, No. 155, § 1; 2003, No. 356, §§ 1, 2.

Amendments. The 2003 amendment added (a)(2); in present (a)(1), added "Ex-

cept for the employees under subdivision (a)(2) of this section" at the beginning and made stylistic changes; added (e)(1)(B); and inserted "of" preceding "annual leave" in (e)(1)(A).

21-4-205. Annual leave — Unused leave.

(a) Whenever an employee is separated from the agency by reason of resignation, layoff, termination of appointment, or dismissal, the unused annual leave to his or her credit as of his or her last duty date shall be liquidated by a lump sum payment, not to exceed thirty (30) working days, inclusive of holidays.

(b)(1) Unused accumulated annual leave of a deceased employee, not to exceed thirty (30) days, shall be payable either to the estate of the deceased or to an individual authorized to receive such payment.

(2) Payment for services of an employee on leave with pay status at the time of death shall continue through close of business on the day of demise.

(3) No payment shall be made in any case until it shall have been determined that the deceased was not indebted to the agency.

(4) A voucher shall be prepared for the money due to be made payable either to the estate of the deceased or to an individual authorized to receive such payment.

History. Acts 1975, No. 567, § 4;
A.S.A. 1947, § 12-2367.

21-4-206. Sick leave — When granted.

(a)(1) Sick leave with pay shall be granted to employees when they are incapacitated for the performance of their duties by sickness, injury, or for medical, dental, or optical treatment.

(2) Sick leave may not be granted for slight illness or indisposition not incapacitating the employee for the performance of his or her regular duties.

(b)(1) Sick leave may also be granted employees due to a death or serious illness of a member of the employee's immediate family.

(2) For the purposes of this subsection, "immediate family" means the father, mother, sister, brother, husband, wife, child, grandmother, grandfather, grandchild, in-laws, or any individual acting as parent or guardian of an employee.

History. Acts 1975, No. 567, § 5; A.S.A. 1947, § 12-2368; Acts 2003, No. 835, § 1.

Amendments. The 2003 amendment added the subdivision designations in (b); and, in present (b)(2), substituted "means" for "shall mean" and inserted "grandchild."

21-4-207. Sick leave — Accrual and use.

(a)(1)(A) Except for the employees under subdivision (a)(1)(B) of this section, each permanent or probationary employee shall be entitled to sick leave with full pay computed on the basis of one (1) day for each complete month of service including the probationary period.

(B) Each fire and emergency service employee of the State Military Department who works a regularly scheduled shift of more than forty-seven (47) hours per week is entitled to sick leave with full pay

computed on the basis of one (1) day and four (4) hours for each complete month of service.

(2)(A) Only one hundred twenty (120) days of sick leave may be carried over at the end of the calendar year.

(B)(i) Fire and emergency service employees under subdivision (a)(1)(B) of this section may accumulate one hundred eighty (180) days of sick leave to carry over at the end of the calendar year.

(ii) However, payments to fire or emergency service employees for unused leave at retirement under § 21-4-501 et seq. shall be calculated at the one-hundred-twenty-day maximum rate for regular state employees.

(3)(A)(i) An employee shall be required to furnish a certificate from an attending physician for five (5) or more consecutive days of sick leave.

(ii) An agency which has a written procedure to identify patterns of sick leave usage may require an employee to furnish a certificate from an attending physician for any use of sick leave.

(B) A certificate from a Christian Science practitioner listed in *The Christian Science Journal* may be submitted in lieu of a physician's certificate.

(b) Sick leave with pay shall not be granted to emergency, hourly, intermittent, or per diem employees.

(c) Sick leave with pay shall be allowed to provisional and temporary employees on the basis of one (1) day for each complete month of service.

(d) Sick leave with pay shall be allowed to permanent, probationary, provisional, and temporary employees who are working one-half ($\frac{1}{2}$) time computed on the basis of one-half ($\frac{1}{2}$) the rate of the schedule for full-time employees for each complete month of service.

(e)(1) Sick leave may not be accumulated during a period of leave without pay when such leave is for ten (10) or more days within a calendar month.

(2) Saturdays, Sundays, holidays, and nonworking days within a period of sick leave shall not be charged as sick leave. Sick leave granted shall be based on working days.

(3) Employees transferring between state agencies without a break in service shall, at the time of transfer, retain all accumulated sick leave credits.

(4) Whenever an employee is laid off because of budgetary reasons or curtailment of activities and he or she is reinstated within a period of six (6) months, accumulated sick leave may be restored to his or her credit.

(f)(1) Except in the case of maternity leave, absences due to sick leave shall be charged in the following order:

- (A) Earned sick leave;
- (B) Earned annual leave;
- (C) Catastrophic leave, when authorized;
- (D) Leave without pay, when authorized.

(2)(A) Requests for sick leave shall be applied for in advance.

(B) If the nature of the sickness makes this impossible, notification of absence on account of sickness shall be given as soon as possible on the first day of absence to the head of the department or the person in charge of the office, and application for sick leave shall be filed within two (2) days after return to duty.

(C) If notification is not made in accordance with the procedure in this section, the absence shall be charged to annual leave or leave without pay, at the discretion of the agency director.

(3) The minimum charge for absence on account of sickness shall be fifteen (15) minutes.

History. Acts 1975, No. 567, § 5; 1983, No. 129, § 1; A.S.A. 1947, § 12-2368; Acts 1989, No. 265, § 1; 1991, No. 91, § 3; 1991, No. 169, § 3; 1997, No. 155, § 2; 2003, No. 356, § 3; 2003, No. 835, § 2.

Amendments. The 2003 amendment by No. 356 redesignated the former introductory language of (a), (a)(1) and (2) as

present (a)(1)(A), (2)(A) and (3), respectively; added the exception at the beginning of (a)(1)(A); added (a)(1)(B) and (a)(2)(B); and added the subdivision designations in present (a)(3).

The 2003 amendment by No. 835 substituted “ten (10) or more days” for “more than ten (10) days” in (e)(1).

21-4-208. Sick leave — Use in conjunction with workers’ compensation.

(a)(1) Employees who are absent from work due to a temporary occupational injury or illness and who are entitled to workers’ compensation benefits, upon proper application, may utilize their accrued sick leave as a supplement to their workers’ compensation benefits so as to receive benefits from both sources equal to but not in excess of their normal weekly pay at the time of their injury or onset of illness.

(2) Such option, when exercised, shall reduce the employee’s accrued sick leave on a proportional basis.

(b)(1) In the event an employee receives workers’ compensation payments as a salary benefit in addition to sick leave payments and the combined payments exceed the employee’s normal weekly pay, the employee shall pay the excess amount to the agency for deposit in the agency’s fund from which the sick leave has been paid.

(2) Upon receipt of the excess amount of pay, the agency shall then restore to the employee’s credit that amount of sick leave that was used in a proportion that the workers’ compensation payment is to the employee’s weekly pay.

History. Acts 1975, No. 567, § 5; 1977, No. 664, § 1; A.S.A. 1947, § 12-2368.

21-4-209. Maternity leave.

Maternity leave shall be treated as any other leave for sickness or disability. Accumulated sick leave and annual leave, if requested by the employee, shall be granted for maternity use, after which leave without pay may be used.

History. Acts 1975, No. 567, § 5;
A.S.A. 1947, § 12-2368.

21-4-210. Leave of absence without pay.

(a)(1) Upon application in writing to and written approval by the agency director, a state employee may be eligible to obtain a continuous leave of absence without pay up to six (6) months unless:

(A) Granted in accordance with § 21-4-212; or

(B) The agency director has determined that the state employee's request for leave of absence without pay would cause an undue hardship on the agency.

(2) At the expiration of such leave, the employee shall be reinstated in the service without loss of any of his or her benefits or shall extend the leave of absence without pay up to an additional six (6) months unless:

(A) The agency director has determined that reinstatement or continuing the leave without pay status of the state employee would cause an undue hardship on the agency; or

(B) The position is no longer available due to a budgetary reduction in staff of the agency.

(b) Failure on the part of an employee to report promptly at the expiration of the leave of absence except for satisfactory reasons submitted in advance shall be a cause for dismissal.

(c)(1)(A) Except in accordance with § 21-4-212 and in the case of maternity leave, leave of absence without pay shall not be granted until all of the employee's accumulated annual leave has been exhausted.

(B) However, an agency may place an employee in a leave-without-pay status:

(i) For disciplinary reasons in accordance with the agency's written and publicized personnel policy;

(ii) Due to inclement weather as designated by state policy; or

(iii) Due to necessary budget reduction as determined by the state agency director.

(2) Leave of absence without pay due to illness shall not be granted until all of the employee's accumulated sick leave has been exhausted.

(3) In the case of maternity leave, the employee may elect to take leave of absence without pay without exhausting accumulated annual and sick leave.

(d)(1) Any employee on leave of absence without pay shall not accumulate leave time, participate in agency group insurance programs to which the state contributes, or receive pay for any legal holidays.

(2) Nothing in this subsection shall preclude an employee from paying the total costs of agency group insurance during such leave and being reinstated into such programs on return to duty.

History. Acts 1975, No. 567, § 6; 1983, No. 129, § 2; 1983, No. 931, § 5; A.S.A. 1947, § 12-2369; Acts 2003, No. 835, § 3. rewrote (a); added the subdivision designations in (c) and made stylistic changes; and added (c)(1)(B)(ii) and (iii).

Amendments. The 2003 amendment

21-4-211. Educational leave.

A permanent employee who is given out-service training may be granted educational leave by the agency director on the following basis:

(1) The employee will continue in the service of the agency for a period of time as statutorily required or, in the absence of a specific law, at least twice the length of his or her course of training;

(2) Any employee who does not fulfill these obligations shall be required to pay to the agency the total cost, or a proportionate share of the cost, of the out-service training and compensation paid during the training period. A written contract shall be signed by the employee and the agency setting forth all terms of the agreement;

(3) The employee shall retain all rights in the position held at the time when leave was granted or in a position with comparable security and pay;

(4) The employee shall retain all benefits and rights during the training period which accrued during that time to regular employees;

(5) The amount of salary paid during the training period will be as agreed on by the employee and agency director but shall not exceed the regular salary paid the employee; and

(6) Payment of tuition, fees, books, and transportation may be made if such sums have been specifically appropriated by the General Assembly for such purposes or if the Department of Health provides assistance to employees seeking a master's degree in public health. The department shall not provide such assistance to more than four (4) employees in any fiscal year.

History. Acts 1975, No. 567, § 9; A.S.A. 1947, § 12-2372; Acts 1999, No. 193, § 1. in (6), added "or if the Department of Health ... public health" in the first sentence, and added the second sentence.

Amendments. The 1999 amendment,

21-4-212. Military leave.

(a)(1) Employees who are members of the National Guard or any of the reserve branches of the armed forces shall be granted leave at the rate of fifteen (15) days per calendar year, plus necessary travel time for annual training requirements or other duties performed in an official duty status.

(2) To the extent this leave is not used in a calendar year, it will accumulate for use in the succeeding calendar year until it totals fifteen (15) days at the beginning of a calendar year.

(3) The leave shall be granted without loss of pay and in addition to regular vacation time.

(4) Each employee who requests military leave shall furnish a copy of his or her orders for his or her personnel file.

(b)(1) An employee who is drafted or called to active duty in the armed forces of the United States or who volunteers for military service shall be placed on extended military leave without pay and upon application within ninety (90) days after the effective date of his or her release from active duty shall be reinstated to the position vacated or an equivalent position at no loss of seniority or any of the other benefits and privileges of employment.

(2) The right of reemployment shall conform with all federal government rules and regulations.

(c) Any employee who enlists or reenlists for a second consecutive tour of military duty shall be deemed to have forfeited his or her reemployment rights.

(d)(1) Personnel called to duty in emergency situations by the Governor or the President shall be granted leave with pay not to exceed thirty (30) working days after which leave without pay will be granted. This leave shall be granted in addition to regular vacation time.

(2) "Emergency situations" means any case of invasion, disaster, insurrection, riot, breach of peace, or imminent danger thereof, threats to the public health or security, or threats to the maintenance of law and order.

(e)(1) During any military leave of absence, the employee shall be entitled to preserve all seniority rights, efficiency or performance ratings, promotional status, retirement privileges, life and disability insurance benefits, and any other rights, privileges, and benefits to which the employee has become entitled.

(2) The period of military service shall, for purposes of computations to determine whether such person may be entitled to retirement benefits, be deemed continuous service, and the employee shall not be required to make any contributions to any retirement fund.

(3) The state shall continue to contribute its portion of any life or disability insurance premiums during the leave of absence on behalf of the employee, if requested, so that continuous coverage may be maintained.

(f) Whenever any state employee as defined by § 21-4-203 or any employee of a political subdivision is granted military leave for a period of fifteen (15) days per calendar year or fiscal year, under the provisions of this section, the military leave will accumulate for use in succeeding calendar years or fiscal years until it totals fifteen (15) days at the beginning of the calendar year or fiscal year, for a maximum number of military leave days available in any one (1) calendar year or fiscal year to be thirty (30) days.

History. Acts 1975, No. 567, § 7; A.S.A. 1947, § 12-2370; Acts 1989, No. 586, § 1; 1991, No. 673, § 3; 1991, No. 956, § 1.
Publisher's Notes. Acts 1991, No. 956, § 1, is also codified as §§ 6-17-306(d) and 21-4-102(e).

21-4-213. Court and jury leave.

Any employee serving as a juror or subpoenaed as a witness to give a deposition in a court or hearing not involving personal litigation or service as a paid expert witness outside the scope of state employment shall be entitled to full compensation in addition to any fees paid for such services, and such services or necessary appearances in any court shall not be counted as annual leave.

History. Acts 1975, No. 567, § 8; A.S.A. substituted “a juror or subpoenaed as a witness ... scope of state employment” for 1947, § 12-2371; Acts 2003, No. 835, § 4. “a witness or juror or party litigant.”
Amendments. The 2003 amendment

21-4-214. Catastrophic leave program.

(a)(1) The Department of Finance and Administration shall have administrative responsibility for developing, implementing, and maintaining a catastrophic leave bank program.

(2) Each state agency approved by the department to participate in the catastrophic leave bank program may establish a catastrophic leave bank for its employees, or the state agency may participate in a catastrophic leave bank to be administered by the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration.

(b) Accrued annual leave and sick leave of employees may be donated to a catastrophic leave bank.

(c) Catastrophic leave with pay may be granted to an employee when the employee is unable to perform his or her duties due to a catastrophic illness.

(d) An employee may be eligible for catastrophic leave when:

(1) The employee has been employed by the state for more than two (2) years;

(2)(A) At the onset of the illness or injury the employee had to his or her credit at least eighty (80) hours of combined sick and annual leave and has exhausted all such leave, unless the combined sick and annual leave requirement is waived under subdivision (d)(2)(B) of this section.

(B) A state agency director or a president of an institution of higher education may waive the minimum eighty-hour requirement for combined sick and annual leave if the agency director determines that the employee warrants eligibility because of extraordinary circumstances under the standards and guidelines promulgated under subdivision (f)(2) of this section;

(3) An acceptable medical certificate from a physician supporting the continued absence is on file; and

(4) The employee has not been disciplined for any leave abuse during the past two (2) years.

(e) If the illness or injury is that of an employee and is covered by workers' compensation, the compensation based on catastrophic leave when combined with the weekly workers' compensation benefit received

by the employee shall not exceed the compensation being received by the employee at the onset of the illness or injury.

(f) The Director of the Department of Finance and Administration, or the director's designee, shall promulgate rules and regulations:

(1) As deemed necessary to carry out the provisions of this section; and

(2) To prescribe the standards and guidelines of the extraordinary circumstances that the state agency director or the president of an institution of higher education may use to waive the minimum requirement for combined sick and annual leave.

History. Acts 1991, No. 91, § 2; 1991, No. 169, § 2; 1999, No. 1176, § 4; 2003, No. 194, §§ 1, 2.

Amendments. The 1999 amendment substituted "when such employee is unable to perform his or her duties" for "when such employee is incapacitated for the performance of the employee's duties" in (c); rewrote (d)(2); deleted former (d)(3);

redesignated former (d)(4) and (d)(5) as present (d)(3) and (d)(4); added (e); redesignated former (e) as present (f); and made stylistic changes.

The 2003 amendment redesignated former (d)(2) as present (d)(2)(A) and added "unless the combined ... this section"; added (d)(2)(B); added (f)(2); and made stylistic and gender neutral changes in (f).

21-4-215. Leave for bone marrow or organ donation — Definitions.

(a) As used in this section:

(1) "Bone marrow donor" means a person from whose body bone marrow is taken to be transferred to the body of another person;

(2) "Organ" means a human organ that is capable of being transferred from the body of a person to the body of another person, including eyes;

(3) "Organ donor" means a person from whose body an organ is taken to be transferred to the body of another person;

(4) "Public school" means any public school or educational cooperative located in the State of Arkansas;

(5) "Public school employee" means a full-time employee of a public school or educational cooperative;

(6) "State agency" means an agency, bureau, board, or commission of any branch of state government, and all state-supported institutions of higher education; and

(7) "State employee" means a full-time employee of the State of Arkansas or any branch, department, board, bureau, commission, or state-supported institution of higher education.

(b) In any calendar year, a state employee or public school employee is entitled to the following leave in order to serve as an organ donor or a bone marrow donor:

(1) No more than seven (7) days of leave to serve as a bone marrow donor; and

(2) No more than thirty (30) days of leave to serve as an organ donor.

(c) In order to qualify for the leave, the state employee or public school employee must:

(1) Request the leave in writing;

(2) Provide the employing agency written verification by the physician to perform the transplantation that the employee is to serve as a human organ or bone marrow donor; and

(3) Provide the employing agency written verification by the physician performing the transplantation that the employee did serve as a human organ or bone marrow donor.

(d) A state employee or school employee may use the leave as provided in this section without loss or reduction in pay, leave, or credit for time of service.

(e) A state agency or public school shall not penalize an employee for requesting or obtaining leave pursuant to this section.

History. Acts 2003, No. 546, § 3.

A.C.R.C. Notes. References to "this subchapter" in §§ 21-4-201 — 21-4-214 may not apply to this section, which was enacted subsequently.

Cross References. Organ and tissue donation education in driver's instruction manual, § 27-18-109.

Organ donor awareness education, § 6-16-501.

SUBCHAPTER 3 — MILITARY LEAVE OF ABSENCE

SECTION.

21-4-301. Definitions.

21-4-302. Officers — Leaves granted.

21-4-303. Officers — Deputy appointed by officer.

21-4-304. Officers — Deputy appointed by Governor.

21-4-305. [Repealed.]

21-4-306. Circuit court judges.

21-4-307. Officers — Expiration of term while on leave.

SECTION.

21-4-308. Employees — Leaves granted.

21-4-309. Employees — Reemployment rights.

21-4-310. Employment and retirement rights.

21-4-311. Vacancy in office or position.

21-4-312. Compensation of absentee and deputy or substitute.

21-4-313. Commission, oath of deputy, or substitute.

Cross References. Rights of reservists, § 21-3-306.

Effective Dates. Acts 1943, No. 247, §§ 17, 20: effective as of date of entry of affected official or employee into military service after Nov. 11, 1940. Emergency clause provided: "Whereas considerable confusion has been caused by the induction of state, county, and municipal officials and employees, into the armed forces of the United States, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage." Approved March 18, 1943.

Acts 1955, No. 72, § 2: approved Feb. 17, 1955. Emergency clause provided: "Whereas the Federal Selective Service Act has been amended to provide the above four-year limitation on re-employment rights, and, whereas there exists considerable confusion regarding the status of public employees in military service, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage."

21-4-301. Definitions.

As used in this subchapter:

(1) "Active service" or "active duty" shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause;

(2) "Military service" shall signify federal service on active duty with any branch of service referred to in subdivision (4) of this section as well as training or education under the supervision of the United States preliminary to induction into the military service;

(3)(A) "Period of military service" shall include the time between the following dates:

(i) For persons in active service as of March 18, 1943, it shall begin with the date of their induction into active service;

(ii) For persons entering active service, it shall begin with the date of their induction into active service.

(B) It shall terminate with death or a date thirty (30) days immediately next succeeding the date of release or discharge from active military service, or upon return from active military service, whichever shall occur first; and

(4) "Person in military service" and "persons in the military service of the United States" shall include the following persons and no others:

(A) All members of the United States Army, United States Navy, United States Marine Corps, and United States Coast Guard; and

(B) All officers of the United States Public Health Service detailed by proper authority for duty with either the Army or the Navy.

History. Acts 1943, No. 247, § 1;
A.S.A. 1947, § 12-2301.

21-4-302. Officers — Leaves granted.

(a) All state, county, municipal, and township officials in the State of Arkansas, and all others who hold office under the government of the State of Arkansas, or county school officials, may, subject to the provisions set forth in this subchapter, be granted leave of absence from their respective offices and duties to perform active military service.

(b) When any officer shall volunteer or be called into the military service of the United States during war, the Governor, or person or persons whose duty it would be to fill the vacancy should there be one, shall, upon application being made by the officer, grant the officer a leave of absence during the time the officer shall be retained in the military service, subject to the exceptions provided in this subchapter.

History. Acts 1943, No. 247, §§ 2, 3;
A.S.A. 1947, §§ 12-2302, 12-2303.

21-4-303. Officers — Deputy appointed by officer.

(a) Officers who are authorized by law to appoint deputies shall appoint capable and competent deputies to take over and perform the duties of the office while the officers are on leave.

(b) The deputy shall be required to furnish good and sufficient bond in the same sum as required of the officer appointing him or her for the faithful performance of such duties.

(c) After the bond is furnished by the deputy, the bond of the officer appointing him or her shall be null and void.

(d)(1) Such officer shall file a certificate with the county clerk stating that he or she is taking a leave of absence under the provisions of this subchapter and shall name in the certificate the deputy selected by him or her to fill the office while he or she is on leave.

(2) The county clerk shall record the certificate in the records of the county court.

(e) The deputy so appointed shall have the right to appoint any deputies necessary for the efficient operation of the office.

(f)(1) Any deputy qualifying under the provisions of this subchapter shall perform all duties that may devolve upon the officer appointing him or her, and shall sign all official papers and documents in the name of the officer so appointing him or her as deputy.

(2) The deputy's acts shall in all respects be as binding as if performed by the officer appointing such deputy.

History. Acts 1943, No. 247, §§ 5, 6;
A.S.A. 1947, §§ 12-2305, 12-2306.

21-4-304. Officers — Deputy appointed by Governor.

(a)(1) Any elected officer who is not authorized by law to appoint deputies to perform the duties of the office which he or she holds, except circuit judges and members of the General Assembly, shall select a competent and qualified person to perform the duties of the office during the time the officer is on leave and certify to the Governor, or the person or persons who would be authorized to fill a vacancy if one should occur in the office, the selection of such person.

(2) The Governor shall confirm the selection by appointment unless he or she shall determine that the person is unfit and not qualified to fill the office.

(3) After it is determined that the person so selected is not qualified, the Governor shall make a statement in writing setting out his or her specific objections to the person selected, and the officer applying for a leave shall certify the selection of a person who is found to be qualified before the leave of absence may be granted.

(4) However, if the officer fails or refuses to appoint or select a person qualified, the Governor, or person who would have the authority to appoint a qualified person to fill the office during the leave, shall make such appointment.

(b) When the officer terminates his or her military service and appears and offers to resume the duties of his or her office, the person appointed to fill the office shall relinquish the same to him or her.

History. Acts 1943, No. 247, §§ 9, 11; A.S.A. 1947, §§ 12-2309, 12-2311.

21-4-305. [Repealed.]

Publisher's Notes. This section, concerning military leave of absence for chancery court judges, was repealed by Acts 2003, No. 1185, § 258. The section was derived from Acts 1943, No. 247, § 7; A.S.A. 1947, § 12-2307.

21-4-306. Circuit court judges.

(a) Whenever a judge of a circuit court shall volunteer or be called into the military service of the United States, the office shall be filled during such leave of absence by the election of an emergency circuit judge by a majority of all regular licensed and practicing attorneys of the judicial district in attendance at a meeting to be called by the circuit judge, after due notice to the attorneys.

(b) The emergency circuit judge shall hold and discharge the duties of the office until such time as the regularly elected circuit judge shall reassume the office and shall be vested with all the powers and charged with all the duties incident to the office.

(c) The emergency circuit judge shall be compensated in the same manner and amount as provided by law to the regularly elected circuit judge holding such office.

History. Acts 1943, No. 247, § 8; A.S.A. 1947, § 12-2308.

CASE NOTES

Act Retroactive.

This section amended the previous civil service act and was retroactive, so that city ordinance of 1942 providing for retention of civil service status of all municipal

employees while in the armed services was valid. *Smith v. Little Rock Civil Serv. Comm'n*, 214 Ark. 765, 218 S.W.2d 366 (1949).

21-4-307. Officers — Expiration of term while on leave.

(a) In the event the term of office of an official on leave shall expire during leave, the office of that official shall be filled by election or appointment as may be required by law.

(b) However, the official on leave shall have the right to qualify and become a candidate for such office, and if nominated and elected, shall have the same rights and privileges provided in this subchapter.

History. Acts 1943, No. 247, § 4; A.S.A. 1947, § 12-2304.

21-4-308. Employees — Leaves granted.

(a) In the discretion of their employer, all employees of the state, counties, municipalities, or political subdivisions of Arkansas may be granted leave of absence under the terms of this subchapter and upon leave of absence being granted to officials under this subchapter.

(b) However, an employee shall not have the right to select or in any way control the selection of his or her successor.

History. Acts 1943, No. 247, § 12;
A.S.A. 1947, § 12-2312.

21-4-309. Employees — Reemployment rights.

(a) Any public employee who may be granted a leave of absence under the provisions of this subchapter and who serves for not more than four (4) years, plus any period of additional service imposed pursuant to law shall be entitled, upon release from service under honorable conditions, to reemployment rights as provided by federal law.

(b) The refusal of any state, county, or municipal official to comply therewith shall subject the official to removal from office.

History. Acts 1943, No. 247, § 13;
1955, No. 72, § 1; A.S.A. 1947, § 12-2313.

CASE NOTES**Seniority Rights.**

Policeman who was at head of list when he entered service was entitled to be restored to position on list on return from service, as court must consider federal,

state, and municipal legislation in passing on rights of public employee as returning serviceman. *Smith v. Little Rock Civil Serv. Comm'n*, 214 Ark. 765, 218 S.W.2d 366 (1949).

21-4-310. Employment and retirement rights.

(a) During a leave of absence, an official shall be entitled to preserve all seniority rights, efficiency rating, promotional status, and retirement privileges.

(b) The period of active military service shall, for purposes of computations to determine whether such persons may be entitled to retirement under the laws of the State of Arkansas, be deemed continuous service in the office of the official or employee.

(c) While absent on leave, the official or employee shall not be required to make contribution to any retirement fund.

History. Acts 1943, No. 247, § 10;
A.S.A. 1947, § 12-2310.

CASE NOTES

ANALYSIS

Seniority.

Temporary appointments.

Seniority.

This section undertook to preserve status of both public officers and public employees who entered the armed services. *Smith v. Little Rock Civil Serv. Comm'n*, 214 Ark. 765, 218 S.W.2d 366 (1949).

Temporary Appointments.

Where city ordinance provided that all appointments to municipal grades were to

be considered temporary until six months after termination of emergency by the President of the United States, all appointments would still be temporary until such declaration by the President although hostilities had ceased, but court could not require new examinations for permanent positions until the city council set up machinery for procedure. *Smith v. Little Rock Civil Serv. Comm'n*, 214 Ark. 765, 218 S.W.2d 366 (1949).

21-4-311. Vacancy in office or position.

(a) Should any person appointed to fill the office or perform the duties of an employee to whom a leave of absence has been granted die, resign, or in any manner or for any cause vacate the office or position to which he or she was appointed, the Governor, or person whose duty it would be to fill the office or position if a vacancy should occur, shall select and appoint a capable and competent person to perform the duties of the office or position until the term of office or employment expires or until the official or employee appears for the purpose of resuming the office or position.

(b) The appointment shall expire and terminate upon either the expiration of the term of office or employment or appearance of the official or employee for the purpose of the resumption of his or her duties.

History. Acts 1943, No. 247, § 15;
A.S.A. 1947, § 12-2315.

21-4-312. Compensation of absentee and deputy or substitute.

(a) The deputies or other persons appointed to fill the office or position of the official or employee during a leave of absence under the provisions of this subchapter shall receive the same compensation and shall be paid in the same manner as the official or employee whose duties he or she assumes.

(b) During the time any official or employee is absent from his or her office or position on a leave of absence granted under the provisions of this subchapter, he or she shall not be entitled to compensation.

History. Acts 1943, No. 247, §§ 14, 15;
A.S.A. 1947, §§ 12-2314, 12-2315.

21-4-313. Commission, oath of deputy, or substitute.

(a) It shall not be required that a commission issue to any person appointed to fill any office or position of one who has been granted a leave of absence under the provisions of this subchapter.

(b) Every person so appointed shall be required to take and subscribe to the same oath as the officer or employer was required to take before he or she entered upon the performance of the duties of the office or position.

History. Acts 1943, No. 247, § 16; A.S.A. 1947, § 12-2316.

SUBCHAPTER 4 — DECEASED EMPLOYEES — PAYMENT FOR ACCRUED LEAVE

SECTION.

21-4-401. Specific repeal required.

21-4-402. Payment for accrued vacation.

21-4-403. Determination of amount of leave and rate of pay — Records.

SECTION.

21-4-404. Payment for unused annual leave and holidays.

A.C.R.C. Notes. References to “this subchapter” in §§ 21-4-401 — 21-4-403 may not apply to § 21-4-404 which was enacted subsequently.

Cross References. Death benefits for public employees, § 21-5-701 et seq.

Effective Dates. Acts 1967, No. 97, § 6: Feb. 15, 1967. Emergency clause provided: “It is hereby found and determined by the General Assembly that employees of the State of Arkansas die from time to time leaving surviving spouses and/or minor children, who are desperately in need of financial assistance, when such employee has accumulated unused vacation time for which there is presently no legal authority to pay sums equitably due and that this Act is immediately necessary to authorize the payment of the same. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public

peace, health and safety shall take effect and be in full force and effect from and after its passage and approval.”

Acts 1991, No. 692, § 6: Mar. 22, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that this Act will allow the estate of a deceased state employee to receive payment for unused annual leave and holidays accrued to the deceased (not to exceed sixty (60) days) at the time of death; that some families of deceased state employees will receive benefits under this Act; and that this Act should go into effect immediately in order to provide those benefits as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

21-4-401. Specific repeal required.

This subchapter shall remain in full force and effect in the event that subsequent legislation relative to vacations is enacted, unless it is specifically repealed.

History. Acts 1967, No. 97, § 4; A.S.A. 1947, § 12-2346.

21-4-402. Payment for accrued vacation.

(a) It shall be the duty of the officer in charge of each agency, department, commission, or board of the State of Arkansas, immediately upon the death of any employee thereof, to cause to be ascertained the number of days of vacation which have accrued and which have not been taken by such employee and to cause the preparation of a voucher or other document which shall direct the payment of a sum which is determined by multiplying the number of unused accrued vacation days by the daily rate of pay which was being paid to such deceased employee as of the date of his or her death.

(b) The Auditor of State or other authorized disbursing officer of any agency, department, commission, or board shall prepare a check, draft, or other negotiable instrument made payable to the estate of the decedent.

History. Acts 1967, No. 97, § 1; A.S.A. 1947, § 12-2343.

21-4-403. Determination of amount of leave and rate of pay — Records.

(a) In the event that the salary of a deceased employee is not fixed on the basis of a day, then the daily rate of pay shall be determined by dividing the monthly salary by thirty (30) or the annual salary by three hundred sixty (360), as the case may be.

(b)(1) The number of days of accumulated leave of any deceased employee shall be determined on the basis of the written rules, regulations, resolutions, or policies promulgated by the agency or department head or by the board or commission.

(2) Each agency, department head, board, or commission shall keep complete records of the vacations taken and accrued vacation time as provided by its rules, regulations, resolutions, or policies.

History. Acts 1967, No. 97, §§ 2, 3; A.S.A. 1947, §§ 12-2344, 12-2345.

21-4-404. Payment for unused annual leave and holidays.

When a person dies while actively employed by any agency of the State of Arkansas, the deceased's estate or the person entitled to receive payment shall receive payment from the state agency for all unused annual leave and holidays which had accrued to the deceased at the time of death, except that the total shall not exceed sixty (60) days.

History. Acts 1991, No. 692, § 1.

A.C.R.C. Notes. References to "this subchapter" in §§ 21-4-401 — 21-4-403 may not apply to this section which was enacted subsequently.

Publisher's Notes. Acts 1991, No. 692,

§ 2, provided: "The provisions of this Act shall apply to not only Department of Correction employees who die after March 22, 1991, but also to those persons who died prior to March 22, 1991 but subsequent to January 1, 1990 and who were

actively employed by the Arkansas Department of Correction on the date of death.”

SUBCHAPTER 5 — FINANCIAL INCENTIVES TO DECREASE USE OF SICK LEAVE

SECTION.

21-4-501. Compensation for unused sick leave at retirement.

21-4-502. Lump sum payment for unused sick leave in 2000.

SECTION.

21-4-503. Applicability of subchapter.

21-4-504. Participation by other state agencies.

Effective Dates. Acts 1999, No. 1127, § 8: July 1, 1999. Emergency clause provided: “It is hereby found and determined by the General Assembly that the provisions of this act should become effective at the beginning of the next fiscal year; that unless this emergency clause is adopted, this act will not go into effect until after

the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1999.”

21-4-501. Compensation for unused sick leave at retirement.

(a) Upon retirement or death, any employee or beneficiary of any employee of any agency of the State of Arkansas shall receive compensation for accumulated unused sick leave as follows:

(1) If the employee has accumulated at least fifty (50) days but fewer than sixty (60) days of sick leave, the employee shall receive an amount equal to fifty percent (50%) of the number of accrued sick leave days rounded to the nearest day multiplied by fifty percent (50%) of the employee’s daily salary;

(2) If the employee has accumulated at least sixty (60) days but fewer than seventy (70) days of sick leave, the employee shall receive an amount equal to sixty percent (60%) of the number of accrued sick leave days rounded to the nearest day multiplied by sixty percent (60%) of the employee’s daily salary;

(3) If the employee has accumulated at least seventy (70) days but fewer than eighty (80) days of sick leave, the employee shall receive an amount equal to seventy percent (70%) of the number of accrued sick days rounded to the nearest day multiplied by seventy percent (70%) of the employee’s daily salary; and

(4) If the employee has accumulated at least eighty (80) or more days of sick leave, the employee shall receive an amount equal to eighty percent (80%) of the number of accrued sick leave days rounded to the nearest day multiplied by eighty percent (80%) of the employee’s daily salary.

(b) For purposes of this section, the employee’s daily salary shall be determined by dividing the annual salary by two hundred sixty (260).

(c) The Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration shall promulgate regulations necessary to implement this subchapter.

(d) In no event shall an employee or beneficiary of an employee receive an amount that exceeds seven thousand five hundred dollars (\$7,500) upon retirement or death due to the provisions of this section.

History. Acts 1999, No. 1127, § 1; 2001, No. 991, § 1.

Amendments. The 2001 amendment, in the introductory language of (a), inserted “or death” and “or beneficiary of any employee”; substituted “multiplied by” for “times” in (a)(1), (2), (3), and (4); and, in (d), inserted “or beneficiary of any employee” and “or death.”

21-4-502. Lump sum payment for unused sick leave in 2000.

(a)(1) State employees shall be entitled on March 1, 2001, to a lump sum payment of twenty dollars (\$20.00) per day for each day of unused sick leave which was accrued during calendar year 2000.

(2)(A) All state agencies subject to this subchapter shall report the average sick leave usage per employee for calendar year 1998 to the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration no later than thirty (30) days after July 30, 1999, and shall report the average sick leave usage per employee for calendar year 2000 to the Office of Personnel Management no later than February 1, 2001.

(B) The office shall calculate the average sick leave usage per state employee during calendar year 2000 based on the best available records and shall report this usage and the percentage of decrease or increase in the average sick leave usage per state employee during calendar year 2000 versus 1998 to the Governor and the House and Senate Committees on State Agencies and Governmental Affairs no later than March 1, 2001.

(C)(i) If the average usage for the calendar year 2000 decreases at least fifteen percent (15%) compared to calendar year 1998, state employees shall be eligible on March 1, 2001, for a lump sum payment of twenty dollars (\$20.00) per day for each day of unused sick leave which was accrued during calendar year 2000.

(ii) If the average sick leave usage during calendar year 2000 decreases by at least twelve percent (12%) but less than fifteen percent (15%) compared to calendar year 1998, the Governor may authorize a lump sum payment of twenty dollars (\$20.00) per day for each day of unused sick leave accrued during calendar year 2000.

(iii) If the average sick leave usage did not decrease by at least twelve percent (12%) during calendar year 2000 as compared to calendar year 1998, the lump sum payment shall not be made for that year.

(b) Contributions of sick leave to an agency's catastrophic sick leave program shall not reduce the lump sum payment provided by this section.

History. Acts 1999, No. 1127, § 2.

21-4-503. Applicability of subchapter.

The provisions of this subchapter apply to employees of the Arkansas State Game and Fish Commission, the Arkansas State Highway and Transportation Department, and all agencies of this state whether in the executive, legislative, or judicial branch of government except that this subchapter does not apply to state-supported institutions of higher learning.

History. Acts 1999, No. 1127, § 3.

21-4-504. Participation by other state agencies.

All state agencies are encouraged to participate in the Department of Finance and Administration's state leave accounting system.

History. Acts 1999, No. 1127, § 4.

CHAPTER 5

COMPENSATION AND BENEFITS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. UNIFORM CLASSIFICATION AND COMPENSATION ACT.
3. SUPPLEMENTAL PERSONAL SERVICES.
4. STATE AND PUBLIC SCHOOL LIFE AND HEALTH INSURANCE BOARD.
5. DEFERRED COMPENSATION.
6. PUBLIC EMPLOYEE WORKERS' COMPENSATION ACT.
7. DEATH BENEFITS.
8. ATTORNEY FEES AND COURT COSTS.
9. CAFETERIA PLANS.
10. EMPLOYEE PERFORMANCE EVALUATION.
11. CAREER LADDER INCENTIVE PROGRAM.

RESEARCH REFERENCES

Am. Jur. 63C Am. Jur. 2d, Pub. Off.,
§ 271 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 21-5-101. Regular Salary Procedures and Restrictions Act.
- 21-5-102. Automobile insurance expenses for employees of the Department of Health.

SECTION.

- 21-5-103. Insufficient funds for payment of county salaries.
- 21-5-104. Deduction of jury duty fees from salary prohibited.
- 21-5-105. [Transferred.]

SECTION.

21-5-106. Annual career service recognition payments for state employees.

21-5-107. Compensation of person hold-

SECTION.

ing more than one elective office.

21-5-108. Salary distributions.

A.C.R.C. Notes. Acts 1991, No. 652, §§ 1-7, provided: "SECTION 1. Notwithstanding provisions of the Uniform Leave and Attendance Act (A.C.A. § 21-4-201, et seq.) any employee of a state agency or institution of higher education called to active duty as a member of the National Guard or any of the Reserve components of the armed forces for the purpose of participation in Operation Desert Shield/Desert Storm shall be eligible for continued proportionate salary payments which, when combined with the employees' active duty pay, shall equal the amount they would have otherwise received were it not for their required active duty under Operation Desert Shield/Desert Storm, until such time as they are released from active duty.

"SECTION 2. It is the intent of the General Assembly that the compensation received by any employee of the State of Arkansas called to active duty after August 2, 1990, for participation in Operation Desert Shield/Desert Storm shall not be less than the employee would have received had such employee not been called to active duty.

"SECTION 3. The Department of Finance and Administration shall establish appropriate procedures for the administration of this program.

"SECTION 4. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

"SECTION 5. Severability. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

"SECTION 6. General repealer. All laws and parts of laws in conflict with this Act are hereby repealed.

"SECTION 7. Emergency clause. It is hereby found and determined by the Seventy-Eighth General Assembly that there is a need to provide compensation to state employees who were called to active duty during Operation Desert Shield/Desert Storm; and this Act should be given effect immediately in order to grant the various agencies and state supported institutions of higher education the power to institute this program as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Effective Dates. Acts 1989, No. 882, § 7: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly that the awarding of annual career service recognition payments to career State employees is necessary to promote morale and retention of vital career employees in State service. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1991, No. 566, § 5: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that the awarding of annual career service recognition payments to career State employees is necessary to promote morale and retention of vital career employees in State service. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1995, No. 490, § 5: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly of the State of Arkansas meeting in Regular Session, that the

awarding of annual career service recognition payments to career State employees is necessary to promote morale and retention of vital career employees in State service. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 2001, No. 1295, § 2: became law without Governor's signature Apr. 5, 2001. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that because of Act 51 of 1967, court reporters and case coordinators have been paid on a

monthly basis, when the vast majority of all other state employees are paid on a semi-monthly or bi-weekly basis. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

21-5-101. Regular Salary Procedures and Restrictions Act.

(a) This section shall be known as and may be cited as the "Regular Salary Procedures and Restrictions Act."

(b) Arkansas Constitution, Article 16, § 4, provides: "The General Assembly shall fix the salaries and fees of all officers in the State, and no greater salary or fee than that fixed by law shall be paid to any officer, employee or other person, or at any rate other than par value; and the number and salaries of the clerks and employees of the different departments of the State shall be fixed by law." Therefore, the following provisions shall be applicable to all authorized regular salary positions in appropriation acts unless specific exception is made otherwise by law:

(1) For any position authorized by the General Assembly of the State of Arkansas for the benefit of any department, agency, board, commission, institution, or program for which the provisions of the Uniform Classification and Compensation Act, § 21-5-201 et seq., are to be applicable, it is declared to be the intent of the General Assembly that the Uniform Classification and Compensation Act, § 21-5-201 et seq., shall govern with respect to:

(A) The entrance salary step;

(B) The frequency with which step increases may be granted; and

(C) The maximum annual salary that may be paid for the grade assigned each employee under the provisions of the Uniform Classification and Compensation Act, § 21-5-201 et seq.;

(2) For any position authorized by the General Assembly for the benefit of any department, agency, board, commission, institution, or program for which a maximum annual salary is set out in dollars, it is the intent of the General Assembly that the position is to be paid at a rate of pay not to exceed the maximum established for the position during any one (1) fiscal year;

(3)(A) For all positions authorized by the General Assembly for any department, agency, board, commission, institution, or program, it is

the intent of the General Assembly that in determining the annual salaries of such employees, the administrative head of the department, agency, board, commission, institution, or program shall take into consideration ability of the employee and length of service.

(B) It is not the intent of the General Assembly that the maximum annual salaries as authorized in the appropriation act, or step increases established for the various grades under the provisions of the Uniform Classification and Compensation Act, § 21-5-201 et seq., be paid unless the employee possesses such qualifications and then only within the limitations of the appropriations and funds available for that purpose.

(C) No employee authorized by the General Assembly shall receive from appropriated or cash funds, either from state, federal, or other sources, compensation in an amount greater than that established by the General Assembly as the maximum annual salary for the employee, unless specific provisions are made therefor by law; and

(4) No employee of the State of Arkansas shall be paid any additional cash allowances including, but not limited to, uniform allowance, clothing allowance, motor vehicle depreciation or replacement allowance, fixed transportation allowance, or meals and lodging allowance other than for reimbursement for costs actually incurred by the employee unless the allowances are specifically set out by law as to eligibility of employees to receive the allowances, and the maximum amount of such allowances are established by law for each employee or for each class of employees eligible to receive the allowances.

History. Acts 1973, No. 284, §§ 1, 2;
A.S.A. 1947, §§ 12-1601.1, 12-1601.2.

21-5-102. Automobile insurance expenses for employees of the Department of Health.

(a) The Department of Health is authorized to pay from maintenance and operation appropriations of either state or federal funds, as reimbursement of actual costs to any regular and full-time employee of the Department of Health, the excess cost to the employee for insurance coverage needed because of employee use of a personal vehicle to transport, as a part of his or her regular duty, individuals, clients, or patients, who are not state employees and who participate in Department of Health programs at clinics, hospitals, doctors' offices, and other locations designated by the Department of Health.

(b) Proof of actual excess cost must be furnished by the employee at the time of request for reimbursement and amount of reimbursement will not exceed the maximum amount as stated in the early periodic screening and diagnosis and treatment contract with the Department of Human Services.

(c) All other costs to an employee for operating a personal vehicle on state business will be considered to be covered by the approved

reimbursement rate per mile as prescribed in state travel regulations promulgated by the Department of Finance and Administration.

History. Acts 1981, No. 223, § 1; **Cross References.** Salary procedures A.S.A. 1947, § 12-1605.1. and restrictions, § 19-4-1601.

21-5-103. Insufficient funds for payment of county salaries.

If, in any year, the funds available for the payment of salaries of elected county officers and employees of a county are inadequate to pay all such salaries and it becomes necessary to reduce salaries, the salary of each elected constitutional officer and each employee in the county shall be reduced in the same percentage.

History. Acts 1975, No. 568, § 1; A.S.A. 1947, § 12-1627.

21-5-104. Deduction of jury duty fees from salary prohibited.

(a) No state, county, or municipal employer in this state shall deduct from the usual compensation of any employee, all or any part of the fees or compensation received by the employee for appearing for grand or petit jury duty or serving on any grand or petit jury in any court in this state.

(b)(1) Any state, county, or municipal employer who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction therefor shall be fined not less than twenty-five dollars (\$25.00) nor more than two hundred fifty dollars (\$250).

(2) A violation shall constitute grounds for dismissal of the employer from his or her office or position of public employment.

History. Acts 1969, No. 86, §§ 1, 2; A.S.A. 1947, §§ 12-1615, 12-1616.

21-5-105. [Transferred.]

A.C.R.C. Notes. This section has been renumbered as § 21-1-103 by Acts 1991, No. 786, § 34.

21-5-106. Annual career service recognition payments for state employees.

(a)(1)(A) Employees of state agencies and nonfaculty employees of institutions of higher education shall become eligible for annual career service recognition payments upon completion of ten (10) or more years of service in either elected positions or classified or nonclassified positions with an agency or institution of the State of Arkansas.

(B) However, the service shall have been in either elected positions or regular full-time positions.

(2) Periods of authorized leave without pay and leave of absence for military service when veterans' reemployment rights are exercised shall not negate eligibility for the payment, provided all other eligibility requirements are met.

(b) The Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration shall establish and publish policies and procedures for the administration of career service recognition payments to state employees upon a determination by the Chief Fiscal Officer of the State that sufficient funds are available for such purpose.

(c) An employee who meets eligibility requirements established by subsection (a) of this section shall become eligible for annual career service recognition payments on the anniversary date of the completion of such service according to the following schedule:

STATE SERVICE	ANNUAL PAYMENT
10 through 14 years of state service	\$300
15 through 19 years of state service	400
20 through 24 years of state service	500
25 or more years of state service	600

(d) Career service recognition payments authorized by this section shall be subject to withholding of all applicable state and federal taxes but shall not be included by retirement systems in determining benefits.

History. Acts 1989, No. 882, §§ 1-4; 1991, No. 566, § 1; 1995, No. 490, § 1; 1999, No. 882, § 2.

Amendments. The 1999 amendment inserted "either elected positions or" twice in (a); and made stylistic changes.

21-5-107. Compensation of person holding more than one elective office.

(a)(1) A person holding more than one (1) elective office shall be entitled to receive compensation from only one (1) of the offices held.

(2) The person shall select the office from which he or she may receive compensation by filing a statement with the Secretary of State and the disbursing officer of each governmental entity in which he or she holds an elective office.

(b) For the purpose of this section:

(1) "Compensation" means all salaries, retirement allowances, group insurance, medical benefits, and anything else of value that a governmental entity provides in return for the services of its officers; and

(2) "Elective office" means any office created by or under authority of the laws of the State of Arkansas, or of a subdivision thereof, that is filled by the voters, except a federal office.

History. Acts 1997, No. 767, § 1.

21-5-108. Salary distributions.

The annual salaries of court reporters and case coordinators shall be paid in twenty-four (24) equal semimonthly installments.

History. Acts 2001, No. 1295, § 1.

2001, No. 1295, § 1, this section began: “Effective July 1, 2001.”

A.C.R.C. Notes. As enacted by Acts

SUBCHAPTER 2 — UNIFORM CLASSIFICATION AND COMPENSATION ACT

SECTION.

21-5-201. Title.

21-5-202. Legislative intent.

21-5-203. Definitions.

21-5-204. Exceptions.

21-5-205. Effect on appropriation acts.

21-5-206. Legislative Council — Duties.

21-5-207. Office of Personnel Management — Duties.

21-5-208. Classification of positions.

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SECTION.

21-5-211. Implementation procedure for grade changes — Salary adjustments.

21-5-212. Rehired or transferred employees.

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21-5-214. New appointments.

21-5-215. [Repealed.]

21-5-216. [Repealed.]

21-5-217. [Repealed.]

21-5-218. Reimbursement for interpreter services for deaf.

21-5-219. Nonclassified employees.

A.C.R.C. Notes. References to “this subchapter” in §§ 21-5-201 — 21-5-218 may not apply to § 21-5-219 which was enacted subsequently.

Acts 2003 (1st Ex. Sess.), No. 22, § 7, effective May 8, 2003, provides:

“§ 21-5-220. Lump Sum Payment

“(a) In the event an Agency Director determines that it is necessary to implement the state workforce reduction policy due to agency structure change, budgetary reductions, abolishment of positions or duties, loss of functional responsibility by the agency, and/or the loss of federal funding, grants or other special funds, the agency director may request and upon approval by the Chief Fiscal Officer of the State the payment of funds on a regular payroll schedule as severance pay to full-time, part-time and job sharing classified and nonclassified employees in regular positions affected by the workforce reduction on the basis of the following lump sum for completed years of service including probationary period:

1-5 years eight hundred dollars (\$800)

5-15 years twelve hundred dollars (\$1200)

over 15 years sixteen hundred dollars (\$1600)

“(b) Such payments are in addition to the lump sum payments allowed pursuant to § 21-4-201 et seq.

“(c) The payments shall not be construed as exceeding the maximum salary.

“(d) The Agency Director shall file a notice of the implementation of the lump sum payment due to the state workforce reduction policy with Legislative Council or the Joint Budget Committee if the General Assembly is in session.

“(e) This provision will be effective until June 30 2005.”

Cross References. Higher education expenditure restrictions, § 6-63-301 et seq.

Procedures for administering unanticipated miscellaneous federal funds, § 19-7-501 et seq.

Effective Dates. Acts 1969, No. 199, § 11: July 1, 1969.

Acts 1969, No. 663, § 2: July 1, 1969. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 199 of 1969 establishes a Uniform Classification and Compensation Plan to be applicable to most State agencies; that said Act 199 will be applicable from and after July 1, 1969; that a number of agencies who require the services of

personnel possessing medical degrees may find it difficult to employ new personnel at the beginning salary step under such Compensation Plan; and, that in order to enable such agencies to obtain competent personnel from and after the effective date of this Act, special provisions are necessary to enable the Personnel Division of the State Administration Department to make exceptions to the beginning salary schedule where necessary. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1969."

Acts 1971, No. 749, § 5: Apr. 28, 1971. Emergency clause provided: "It is hereby found and determined by the Sixty-Eighth General Assembly meeting in Regular Session that it is essential for the State of Arkansas to adopt a more competitive salary structure in order to insure that the State receives its fair share of qualified persons to carry out the services of State Government in a manner that is efficient and economical. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1971, No. 750, § 6: Apr. 28, 1971. Emergency clause provided: "It is hereby found and determined by the Sixty-Eighth General Assembly meeting in Regular Session that it is essential for the State of Arkansas to adopt a more competitive salary structure in order to insure that the State receives its fair share of qualified persons to carry out the services of State Government in a manner that is efficient and economical. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1973, No. 286, § 5: Mar. 12, 1973 (except compensation plan effective July 1, 1973). Emergency clause provided: "It is hereby found and determined by the Sixty-Ninth General Assembly meeting in Regular Session that it is essential for the State of Arkansas to adopt a more compet-

itive salary structure in order to insure that the State receives its fair share of qualified persons to carry out the services of State Government in a manner that is efficient and economical. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after the date of its passage and approval, provided that the Compensation Plan provided in Section One (1) of this Act shall not become effective until July 1, 1973."

Acts 1973, No. 873, § 11: July 1, 1973. Emergency clause provided: "It is hereby found and determined by the Sixty-Ninth General Assembly meeting in Regular Session that it is essential for the State of Arkansas to adopt a more competitive salary structure and revise the classification plan and institute the necessary provisions to accomplish this. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1973."

Acts 1974 (Ex. Sess.), No. 39, § 7: July 11, 1974. Emergency clause provided: "It is hereby found and determined by the Sixty-Ninth General Assembly of the State of Arkansas meeting in Extraordinary Session, that the rapid increase in inflation has greatly reduced the effective purchasing power of the State employees salaries and that immediate passage of this Act is necessary to prevent irreparable harm to the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 932, § 6: July 1, 1975. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly that it is essential for the State of Arkansas to adopt a more competitive salary structure and revise the Classification Plan, in order to attract and maintain competent employees; and that it is essential to provide for the implementation of such changes. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the im-

mediate preservation of the public peace, health and safety, shall be in full force and effect from and after July 1, 1975."

Acts 1977, No. 289, § 2: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-first General Assembly that it is essential for the State of Arkansas to adopt a more competitive salary structure in order to attract and retain competent employees. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1977."

Acts 1979, No. 3, § 3: Jan. 18, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly that Arkansas state employees should be compensated at the minimum wage established under the Federal Fair Labor Standards Act, and that such minimum wage is to be increased on January 1, 1979, and that to delay the increases in compensation provided herein for 90 days after the adjournment of this General Assembly would place Arkansas in a non-competitive position with private industry and would unnecessarily delay salary increases to those state employees. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect on and after the date of its passage and approval."

Acts 1979, No. 828, § 7: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly that it is essential for the State of Arkansas to adopt a more competitive salary structure and revise the Classification Plan, in order to attract and maintain competent employees; and that it is essential to provide for the implementation of such changes. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after July 1, 1979."

Acts 1981, No. 19, § 3: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing Uniform Classification and Compensation Plan is inade-

quate; that the revised plan contained in this Act should become effective at the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1981, No. 650, § 7: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly that it is essential for the State of Arkansas to adopt a more competitive salary structure and revise the Classification Plan, in order to attract and maintain competent employees; and that it is essential to provide for the implementation of such changes. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after July 1, 1981."

Acts 1981, No. 695, § 5: Mar. 24, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law pertaining to compensatory time under the Uniform Attendance and Leave Policy Act is vague and that this Act is immediately necessary to eliminate confusion. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 68, § 3: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing Uniform Classification and Compensation Plan is inadequate; that the revised plan contained in this Act should become effective at the beginning of the next fiscal year. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1983."

Acts 1983, No. 931, § 7: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly that it is essential for the State of Arkansas to adopt a

Uniform Personnel Classification Plan for State Agencies and to provide that essential changes are implemented for the adequate functioning of those State Agencies. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of public peace, health and safety, shall be in full force and effect from and after July 1, 1983."

Acts 1985, No. 101, § 3: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly that it is essential for the State of Arkansas to adopt a more competitive salary structure in order to recruit and retain competent employees. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985."

Acts 1985, No. 981, § 10: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly that it is essential for the State of Arkansas to adopt a Uniform Personnel Classification Plan for State Agencies and to provide that essential changes are implemented for the adequate functioning of those State Agencies. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985."

Acts 1989, No. 793, § 19: Mar. 21, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly of the State of Arkansas that the current Uniform Compensation Plan is inadequate to pay the employees of the various state agencies and institutions of higher education; that the current Uniform Personnel Classification plan describing the job titles and grade levels of state employees is no longer descriptive of the jobs being performed and the levels of pay needed to compensate them; and therefore that it is essential for the State of Arkansas to adopt a more competitive salary structure and to adopt more descriptive job titles and appropriate grade levels to provide for the essential functioning of state agencies and state supported institutions of higher ed-

ucation. Therefore, in order to keep the government services of the State of Arkansas functioning properly, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1989 (1st Ex. Sess.), No. 202, § 13: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that expanded development and coordination of early childhood programs is essential to meeting the developmental and educational needs of young children in Arkansas. Therefore, an emergency is hereby declared and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect of July 1, 1989."

Acts 1991, No. 1148, § 15: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that it is essential to adopt a revised Uniform Classification System for state agencies and institutions of higher education; that the revisions must begin at the beginning of the new biennium; and that these changes are essential for the continued functioning of the state agencies and institutions of higher education. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1993, No. 708, § 6: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas that it is essential to adopt a revised Uniform Classification System for state agencies and institutions of higher education; that the revisions must begin at the beginning of the new biennium; and that these changes are essential for the continued functioning of the state agencies and institutions of higher education. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1995, No. 966, § 5: July 1, 1995.

Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly of the State of Arkansas meeting in Regular Session, that it is essential to adopt a revised Uniform Classification System for state agencies and institutions of higher education; that the revisions must begin at the beginning of the biennium; and that these changes are essential for the continued functioning of the state agencies and institutions of higher education. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

Acts 1995, No. 992, § 5: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly of the State of Arkansas meeting in Regular Session, that it is essential to adopt a revised Uniform Compensation Plan for state agencies and institutions of higher education; that the revisions must begin at the beginning of the new biennium; and that these changes are essential for the continued functioning of state agencies and institutions of higher education. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1995."

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become ef-

fective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 530, § 6: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-first General Assembly, that the Constitution of the State of Arkansas requires [sic] the General Assembly to set the titles and pay of state employees and that changes to titles and salaries must coincide with the beginning of the fiscal year. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

Acts 1997, No. 532, § 8: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-first General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that changes to the state compensation plan must take effect at the same time as appropriations made to pay salaries for the various agencies; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agencies and insitutions for which the appropriations are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

Acts 1997, No. 899, § 11: March 27, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that a substantial number of state employees are eligible for salary increases on July 1, 1997; that this act prescribes the procedure to be followed in awarding salary increases to classified state employees; and that unless this emergency clause is adopted the procedures prescribed herein will not be in

effect until after July 1, 1997. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 813, § 5: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that changes to the state compensation plan must take effect at the same time as appropriations made to pay salaries for the various agencies. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999."

Acts 1999, No. 1019, § 10: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that that the Constitution of the State of Arkansas requires the General Assembly to set the titles and pay of state employees and that changes to titles and salaries must coincide with the beginning of the fiscal year. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999."

Acts 2001, No. 1461, § 14: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly that several position changes have been incorporated into agencies' budgets to begin July 1, 2001 and that changes to the Uniform Classification and Compensation Act must also take effect at that time to prevent confusion and uncertainty. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2001."

Acts 2001, No. 1462, § 2: July 1, 2001.

Emergency clause provided: "It is found and determined by the General Assembly that changes in employee classifications title and grades are incorporated into the various appropriation acts for the 2001-2003 biennial period and this law must take effect at the same time as the beginning of the fiscal year in which the new budgets begin. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2001."

Acts 2001, No. 1794, § 2: Apr. 19, 2001. Emergency clause provided: "It is found and determined by the General Assembly that it is necessary to protect employees of the Alexander Youth Center from loss of pay as a result of privatization of the Center; and that in order to provide adequate protection to the employees this act should become effective immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 923, § 2: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that several changes in title and grades in the state compensation system have been approved for use by state agencies; that these changes must go into effect at the beginning of the fiscal year when the new agency budgets go into effect; and that this act is immediately necessary because state agencies will not be able to function properly without this act taking effect on the first day of the new fiscal year. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of

2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid

confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

21-5-201. Title.

This subchapter may be referred to and cited as the “Uniform Classification and Compensation Act”.

History. Acts 1969, No. 199, § 2; A.S.A. 1947, § 12-3201.

CASE NOTES

Cited: Briggs v. Anderson, 787 F.2d 1262 (8th Cir. 1986); Briggs v. Anderson, 796 F.2d 1009 (8th Cir. 1986).

21-5-202. Legislative intent.

(a) It is the purpose and intent of this subchapter to establish uniform classifications for all affected state employees of agencies, boards, commissions, and institutions of higher education covered by the provisions of this subchapter and to establish a uniform compensation plan to be followed by the agencies, boards, commissions, and institutions of higher education, with respect to the authorized positions of their employees.

(b) It is the purpose of this subchapter to implement the administration and enforcement of the uniform position classification and compensation plan provided for affected agencies and institutions in accordance with sound business management practices.

History. Acts 1969, No. 199, § 1; A.S.A. 1947, § 12-3202; Acts 1989, No. 793, § 1.

21-5-203. Definitions.

As used in this subchapter:

(1) “Agency head” or “agency director” means the executive head of all agencies, authorities, departments, boards, commissions, bureaus, councils, or other agencies of the state;

(2) “Class” means a group of positions sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training and experience or skill, and other characteristics that the same title, the same test of fitness, and the same scale of compensation have been or may be applied to each position in the group;

(3) "Class specification" means a written document which identifies a group of positions that have the same type of work and responsibility and states the general components by providing a class title, class code, distinguishing features and example of work, knowledge, skills, and abilities, and the necessary minimum education and experience requirements to perform the assigned duties;

(4) "Demotion" means the change in duty assignment of an employee from a position in one classification to a position in another classification of a lower salary grade requiring fewer qualifications such as lower skill requirements, less job-related experience, and a lower level of responsibility;

(5) "Employee" means a person regularly appointed or employed in a position of state service by a state agency or institution of higher education for which he or she is compensated on a full-time basis, and for which a class title and pay grade is established in the appropriation act for such agency or institution in accordance with the classification and compensation plan enacted in this subchapter;

(6) "Grade" means a pay range having an entrance salary rate, intermediate rates, and a maximum rate of pay as provided in this subchapter;

(7) "Head of institution" means the executive head of all institutions of higher education;

(8) "Institution of higher education" or "institution" means all public institutions of higher education supported in whole or in part by appropriation of state funds;

(9)(A)(i) "Job sharing" means a form of employment in which the hours of work of two (2) persons are arranged in such a way as to cover single, regular full-time, or extra help salary positions.

(ii) The Department of Finance and Administration may authorize job sharing for all regular full-time or extra help salary positions, whether permanent or temporary.

(B)(i) The Director of the Department of Finance and Administration or his or her designee shall promulgate necessary rules and regulations as deemed necessary to carry out the provisions of subdivision (9) of this section.

(ii) All rules and regulations promulgated pursuant to subdivision (9) of this section shall be reviewed by the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof;

(10) "Legislatively enacted salary grade change" means the enactment of legislation which has the effect of lowering the salary grade level assigned to a specific classification title, referred to as a class downgrade, or raising the salary grade level assigned to a specific classification title, referred to as a class upgrade, from a level other than that assigned to the class title on June 30 of the previous fiscal year;

(11) "Occupational group" means a collection of classes having similar features of job components and sharing a primary function. In

determining the occupational group to which a class will be assigned, consideration will be given to the type of work to be performed, the type of education or experience required, job elements or tasks, and the purpose of the job;

(12) "Office of Personnel Management" means the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration acting under the authority granted in this subchapter and subject to the direction of the Director of the Department of Finance and Administration;

(13) "Pay level" means any single rate of pay in a grade including the entrance rate, intermediate rates, and the maximum rate of pay;

(14) "Position" means an office or employment in an agency or institution of higher education, occupied or vacant, involving duties requiring the services of one (1) or two (2) persons;

(15)(A) "Promotion" means the change in duty assignment of an employee from a position in one classification to a position in another classification of a higher salary grade requiring higher qualifications, such as greater skill and longer experience, and involving a higher level of responsibility.

(B) A promotion, for purposes of salary determination, shall be classified as "minor" if the change in duty assignment is to a classification of one (1) grade higher or "major" if to a classification of two (2) or more grades higher than the employee's grade at the time of promotion;

(16)(A) "Reclassification" means a change in the assignment of a position from one (1) classification title to another classification title of either a higher or lower salary grade when material and permanent changes in the duties and responsibilities of the position being recommended for reclassification have occurred or when it is necessary to establish a new classification title to meet federal standards as a prerequisite for federal programs.

(B) Positions eligible for reclassification within an agency or institution of higher education shall be only those positions assigned a specific classification title and salary grade.

(C) Positions having a line item maximum salary shall be considered exempt from the provisions in this section and may not be reclassified from line item status to a classified designation bearing a salary grade.

(D) Positions within an agency allocated to a specific classification title and salary grade may not be reclassified to a classification title having a maximum annual line item salary amount;

(17) "State agencies" means all agencies, authorities, departments, boards, commissions, bureaus, councils, or other agencies of the state supported by appropriation of state or federal funds, except those agencies excluded pursuant to § 21-5-204; and

(18) "Working title" means a descriptive title given a position within a class for ready identification of the job being performed. A working title consists of a procedural description of the duties and responsibilities of a position.

History. Acts 1969, No. 199, § 3; 1971, No. 750, § 1; 1973, No. 873, § 2; 1979, No. 828, § 1; 1981, No. 198, § 1; 1981, No. 650, § 1; 1985, No. 981, § 1; A.S.A. 1947, § 12-3203; Acts 1989, No. 793, § 2; 1991, No. 994, §§ 1-3; 1991, No. 1148, § 1; 1997, No. 179, § 33; 1999, No. 1019, § 1; 2001, No. 1461, §§ 1, 2.

Amendments. The 1999 amendment substituted "Pay level" for "Step" in (11).

The 2001 amendment repealed former (13) and rearranged the subdivisions in alphabetical order; redesignated former (9)(A) as (9)(A)(i) and (9)(A)(ii); in (9)(A)(i) and (9)(A)(ii), added "or extra help" following "full-time" and substituted "positions" for "position"; inserted "whether permanent or temporary" in (9)(A)(ii); and made stylistic changes.

21-5-204. Exceptions.

(a) The provisions of this subchapter shall not apply to the following agencies:

(1) The elected constitutional officers of this state and their employees;

(2) The General Assembly and its employees, including employees of the Bureau of Legislative Research and the Division of Legislative Audit;

(3) Members and employees of the Supreme Court, the Court of Appeals, circuit courts, prosecuting attorneys, and the Administrative Office of the Courts;

(4) The Arkansas State Highway and Transportation Department; and

(5) Federal military technicians, military training support personnel, federally funded personnel of the Arkansas National Guard, and other military personnel who are paid directly by the federal government.

(b) Salaries for agency head, agency director, or head of institution positions shall be exempt from the classification and compensation plan, and the maximum annual salary rate shall be authorized in the respective appropriation act.

History. Acts 1969, No. 199, § 3; 1979, No. 828, § 1; 1981, No. 198, § 1; 1981, No. 650, § 1; A.S.A. 1947, § 12-3203; Acts 1989, No. 793, § 3.

21-5-205. Effect on appropriation acts.

(a) All appropriation acts of all agencies and institutions of higher education subject to the provisions of this subchapter shall be governed by it with respect to grades, class titles, salary increases, salary increase eligibility, and other provisions unless special language in the appropriation act of the agency or institution specifically allows the agency or institution to provide salary increases, grade assignments, class title assignments, salary increase eligibility, and other provisions different from those provided by this subchapter.

(b) Where the intent of the General Assembly, by amendment to appropriation bills, is to allow a higher grade for a classification than that listed in this subchapter, the grade assigned to the classification in the appropriation act for the classification, as designated with the

higher grade level, shall be the grade level for the classification in the agency or institution of higher education during the biennium.

(c) When a higher salary grade level is authorized in this subchapter for classifications which are not reflected in the appropriation action of an agency or institution of higher education, this subchapter shall set the salary grade levels to be authorized in an agency's or institution's appropriation act for the biennium unless special language in the appropriation act of an agency or institution allows the agency or institution to provide salary increases other than that provided in this subchapter.

(d) It is the intent of this section that the respective agencies and institutions governed by the provisions of this subchapter be authorized to allow salary grade levels as provided in the appropriation acts of the agencies and institutions, provided that the rules which apply to salary increases under the provisions of this subchapter shall not be waived unless special language in the appropriation act of the agency or institution authorizes the agency or institution to provide increases other than those authorized under the provisions of this subchapter.

History. Acts 1969, No. 199, § 7; 1973, §§ 12-3207, 12-3209; Acts 1989, No. 793, No. 873, § 8; 1975, No. 932, § 4; 1979, No. § 4.
828, § 4; 1981, No. 650, § 4; A.S.A. 1947,

21-5-206. Legislative Council — Duties.

In order to assist the General Assembly in more efficiently performing its constitutional duty, that being "... the number and salaries of the clerks and employees of the different departments of the state shall be fixed by law.", the Legislative Council shall:

(1) Review the establishment and implementation of any new classification titles proposed between legislative sessions due to program changes;

(2) Review the staffing levels of all agencies and institutions covered by the provisions of this subchapter and submit to the General Assembly, when in regular or special session, recommendations for revisions, modifications, or additions thereto;

(3) Conduct, when necessary, salary surveys of the private and public sector of jobs comparable to those contained in § 21-5-208 for purposes of establishing equitable and competitive rates of compensation for employees occupying positions affected by this subchapter;

(4) Periodically review and recommend any changes found necessary in the job evaluation system used to set salary grade levels for all classifications affected by the provisions of this section and forward the recommendations to the Office of Personnel Management of the Management Division of the Department of Finance and Administration; and

(5) Prepare and submit recommendations for revisions in this subchapter to the General Assembly when in session.

History. Acts 1985, No. 981, § 8; A.S.A. 1947, § 12-3212; Acts 1989, No. 793, § 5.

A.C.R.C. Notes. The language quoted in the introductory paragraph of this sec-

tion is from Arkansas Constitution, Article 16, § 4.

Cross References. Legislative Council, § 10-3-301 et seq.

21-5-207. Office of Personnel Management — Duties.

(a) It shall be the duty of the Office of Personnel Management of the Management Division of the Department of Finance and Administration to perform the following administrative responsibilities with respect to the state classification and compensation plan, subject to the provisions of this subchapter:

(1) To determine that each position of a state agency or institution of higher education affected by this subchapter is allocated to a class having a written class specification based on the duties and responsibilities assigned to the position and the requirements necessary to satisfactorily perform the duties;

(2) To assist the various state agencies or institutions of higher education in the allocation of positions to classes established in this subchapter, and in the appropriation act covering each of the several state agencies or institutions affected by this subchapter, and to disallow the allocation of a position to a class that is not in conformance with the provisions of this subchapter;

(3) To cooperate with any other state agency, department, board, commission, or institution that is not covered by this subchapter which may wish to voluntarily establish its positions into classifications in a like manner as provided in this subchapter for state agencies or institutions of higher education covered by it;

(4)(A) To authorize the reclassification of positions in a state agency or institution of higher education affected by the provisions of this subchapter in cases where it has been determined by the office that there are material changes in the duties and responsibilities assigned to the position when there is no available vacant position having the proper classification and where it is impracticable to restructure the duties of the position to the proper classification.

(B) The reclassification of positions may also be authorized where it is necessary to establish a new classification to meet federal standards as a prerequisite for federal programs, provided that no position may be reclassified to a class with a higher salary grade than that approved by the General Assembly, and the reclassified positions shall not be placed in a class and receive pay at a salary rate in excess of the maximum salary rate authorized for the position, which was reclassified as provided in the appropriation act of the agency or institution.

(C) Reclassifications of positions authorized may be approved by the office, but shall be reported monthly to the Legislative Council;

(5)(A) To review all class specifications and all classes and grades and the compensation plan affecting all state agencies and institutions of higher education covered by the provisions of this subchapter

and to submit to the Legislative Council and the Governor in advance of the regular session of the General Assembly recommendations for revisions, modifications, or additions thereto.

(B) The office shall, when necessary, confer with the staff of the Legislative Council on the development of and revisions to uniform classification and compensation systems.

(C) Time periods for the development of recommendations and time periods for the review by the Legislative Council of those recommendations will be as established by the Personnel Committee of the Legislative Council.

(D) The time period shall be sufficiently in advance of budget hearings for the regular session to allow for the thorough review by the Personnel Committee of the Legislative Council;

(6) To develop and implement rules and regulations to accomplish the purposes of this subchapter;

(7) To revise, as necessary, upon review by the Legislative Council, the minimum education and experience requirements for all class specifications in order to maintain a valid relationship between the requirements and the duties and responsibilities of the jobs;

(8)(A) To establish a procedure to allow for the review of the qualifications of applicants whose education and experience do not meet or exceed that required by the class specification but who have other job-related qualifications which might be validly substituted for the class requirements.

(B) This procedure is intended specifically to allow agencies or institutions to substitute job-related education and experience for the specific requirements stated on the class specification without the necessity for the revision of the class requirements.

(C) The procedure will require the final approval of the personnel administrator, with the review of the Legislative Council;

(9)(A) To monitor agency and institution personnel transactions to ensure that unqualified appointments, including new hires, promotions, and reductions in grade are identified.

(B) Questionable appointments shall be forwarded to the personnel administrator for further review.

(C) Payroll vouchers containing unqualified appointments will not be processed until the unqualified appointment is removed from the payroll or placed into a position for which the individual meets the minimum qualifications of the classification.

(D) It is the specific responsibility of the director of each agency or the head of each institution covered by the provisions of this subchapter to certify that the qualifications of persons appointed to positions within the agency or institution do meet or exceed the minimum education and experience requirements as stated on the class specification;

(10)(A) To establish during the biennium, upon the review of the Legislative Council, new classifications at an appropriate grade level in order to meet new or changed conditions and to report, at the end

of each fiscal year, all class titles contained in § 21-5-208 for which a class specification has not been written.

(B) Any classification established within the biennium under the provisions of subdivision (10) of this section shall remain in effect for the remainder of the biennium during which it was established unless specifically authorized to continue by the General Assembly as an addition to this subchapter;

(11) To revise, as necessary, with the review of the Legislative Council, the class specification of a classification in order to ensure the accuracy of the description of the assigned duties and the minimum requirements necessary to perform these duties;

(12) To administer and maintain a system for the evaluation of employee performance effectiveness;

(13) To provide assistance to state agencies or institutions covered by the merit system in the areas of recruitment, testing, and merit placement of applicants under the rules and regulations established for the merit system;

(14) To provide assistance to state agencies and institutions in identifying, developing, and maintaining training and resource programs; and

(15) To develop and implement, as needed, upon the review of the Legislative Council, rules and regulations to ensure a uniform system of personnel administration within state government.

(b) In order to ensure and provide for the accuracy and efficiency of the Uniform Classification and Compensation Act, § 21-5-201 et seq., and to provide for an efficient and equitable system of personnel management, the office, with the review of the Legislative Council, is directed to:

(1) Study on a continuing basis and modify and revise when and where necessary the current classifications, the class specifications, and minimum requirements;

(2) Create where necessary new classifications at an appropriate grade level which will accurately describe those positions for which no appropriate classification exists;

(3) Determine those positions which are improperly classified and reclassify those positions to the appropriate classification subject to the provisions of this subchapter; and

(4) Develop and implement the policies, rules, regulations, and procedures necessary for the establishment and maintenance of the Uniform Classification and Compensation Act, § 21-5-201 et seq.

History. Acts 1969, No. 199, § 6; 1973, No. 873, §§ 1, 5, 6; 1975, No. 932, § 3; 1979, No. 828, § 3; 1981, No. 650, § 3; 1981, No. 695, § 3; 1983, No. 931, § 3; 1985, No. 981, § 3; A.S.A. 1947, §§ 12-3206, 12-3206.1; Acts 1989, No. 793, § 6; 1991, No. 1148, § 2.

CASE NOTES

Cited: Briggs v. Anderson, 787 F.2d 1262 (8th Cir. 1986); Briggs v. Anderson, 796 F.2d 1009 (8th Cir. 1986).

21-5-208. Classification of positions.

(a)(1) There are established for state agencies and institutions of higher education covered by the provisions of this subchapter the following classification titles and grades.

(2) No payment of salaries may be made except in conformity with the maximum annual salary rates assigned to these grades for each year of the fiscal biennium as provided in the appropriation act of the agency or the institution and in this subchapter.

(b) The following classification titles with grades indicated are approved for the state classification plan, subject to the appropriation acts for the various state agencies and various institutions of higher education affected by this subchapter:

CLASS	TITLE	GRADE
004Z	HLTH POLICY ADMINISTRATOR	26
006Z	BUR JUVENILE PROB & RESEARCH ADMIN	26
010Z	SOIL & WATER DEP DIR/CHIEF ENGINEER	26
012Z	WIB DEPUTY DIRECTOR	26
016Z	PSC DIR OF ELECTRIC UTILITIES SECT ...	26
017Z	DHS/DYS ADMIN PROG COMPLIANCE	26
020Z	BANK CHIEF EXAMINER	26
021Z	ASSESSMENT COORD DEPT ASST DIREC- TOR	26
022Z	DHS/DCO CHIEF PROGRAM ADMR	26
026Z	ASD/ASB BUSINESS MANAGER	26
027Z	ED ASSOC DIRECTOR APSCN	26
029Z	SBS DEPUTY DIRECTOR	26
031Z	ED LEGAL ASST TO DIRECTOR	26
033Z	CRIME LAB SCIENTIFIC OPS MGR	26
041Z	EXECUTIVE ADMIN GOV MANSION	26
053Z	ESD DIR INTERNAL AUDIT & SECURITY ...	26
056Z	COR HEAD FARM MANAGER II	26
063Z	PSC GENERAL COUNSEL	26
067Z	PSC TAX DIVISION DIRECTOR	26
100Z	VOC ED ASSOC DIR FOR VOC SCHOOLS ...	26
102Z	CORRECTIONAL WARDEN	26
105Z	VOC ED ASSOC DIR FOR FINANCE	26
106Z	VOC ED ASSOC DIR FOR INSTRUCTION ...	26
127Z	WRKS COMP DEPARTMENT HEAD	26
132Z	DFA STATE CLASS & COMP MANAGER	26

CLASS	TITLE	GRADE
142Z	HLTH DIR IN-HOME SERVICES	26
150Z	DFA ADMR OF INTERGOVERNMENTAL SVCS	26
183Z	DFA TAX RESEARCH ADMINISTRATOR	26
202Z	DDSSA ASST DIRECTOR	26
213Z	ED LEAD PLNR FOR DESEGREG MONITOR	26
214Z	ED ASSOC DIR INSTRUCTION	26
216Z	ED ASSOC DIR FOR SPECIAL EDUCATION	26
217Z	ASSOC DIR STUDENT SUPPORT SERVICES	26
218Z	ED ASSOC DIR VOC SUPPORT SERVICES ..	26
221Z	ED ASSOC DIR FINANCE	26
251Z	ED STATE LIBRARY ASSOC DIR DEV SVCS	26
340Z	HLTH DIR ENGINEERING	26
561Z	PRKS & TRSM PARKS OPERATIONS MGR ..	26
563Z	PRKS & TRSM PARKS PLNG & DEV MGR ...	26
593Z	CHIEF WATER MANAGEMENT	26
594Z	DEQ CHIEF AIR DIVISION	26
599Z	EXECUTIVE DIR - BAIL BONDSMAN BOARD	26
615Z	MILITARY DEPUTY ADJUTANT GENERAL ..	26
617Z	STATE POLICE DEP DIR/LT COL	26
648Z	REHAB ADMINISTRATOR-HSRC	26
656Z	REHAB DEPUTY COMMISSIONER	26
696Z	SECURITIES DEPUTY COMMISSIONER	26
767Z	WRKS COMP PUB EMP CLAIM ADMR	26
801Z	ASST DIR FRAUD INVESTIGATION	26
827Z	DP CENTER MANAGER	26
855Z	DFA ASST BUDGET ADMR/BUDGET SYSTEMS	26
856Z	DFA ASST ACCOUNTING ADMR	26
922Z	ESD DEP ASST DIR EMPLOYMENT ASSISTANCE	26
924Z	ESD DEP ASST DIR UNEMPLOYMENT INSURANCE	26
927Z	DIRECTOR, COURT AUTOMATION PROJECT	26
986Z	INSURANCE RISK MANAGEMENT ADMR ..	26
A005	INSURANCE PROPERTY & CASUALTY ADMIN	26
A015	INS CHIEF CERTIFIED FINANCIAL EXAM ..	26
A066	DFA TAX RESEARCH ADMINISTRATOR	26
A146	INSURANCE LIFE & HEALTH ADMIN	26
D023	DIS APPL DEVELOPMENT SPEC	26
D024	DIS INFORMATION SVCS ADMR	26

CLASS	TITLE	GRADE
D025	DIS OPERATIONS MANAGER	26
D027	DIS TECH PLANNING SPEC I	26
D037	DIS SYSTEMS PROGRAMMER/ANALYST III	26
D043	DIS NETWORK MANAGER	26
D073	OIT APPLICATIONS DEV SPECIALIST	26
D078	OIT TECHNICAL PLANNING SPEC I	26
D098	OIT SYSTEMS PROGRAMMER/ANALYST III	26
D109	DFA AASIS FI/HR TEAM MANAGER	26
D119	DFA AASIS TECHNICAL MANAGER	26
L001	CERTIFIED NURSE MIDWIFE	26
L014	DIRECTOR OF PHARMACY SERVICES	26
L134	PSYCHOLOGIST SUPERVISOR	26
R005	ED ASSISTANT TO DIRECTOR	26
R007	POL C ADMIN HEARING OFFICER	26
R012	ADMINISTRATIVE LAW JUDGE	26
R015	CLASS A PUBLIC DEFENDER	26
R038	ATTORNEY SUPERVISOR	26
007Z	EXEC DIR CARDVC	25
009Z	PSC GAS & WATER SECTION MANAGER	25
011Z	PUB DEF DEFENSE SVCS ADMIN	25
019Z	DCP ADMIN SVCS MGR	25
023Z	DHS/DCO ASST CHIEF PROGRAM ADMR ...	25
025Z	FORESTRY DEPUTY STATE FORESTER	25
037Z	INFORMATION SYSTEMS MANAGER	25
038Z	DFA DATA CENTER MANAGER	25
047Z	PLANT BOARD ASSISTANT DIRECTOR	25
052Z	DFA PRE-AUDIT MANAGER	25
054Z	COR HEAD FARM MANAGER I	25
060Z	MEN HLTH SERVICES REGIONAL MAN- AGER	25
073Z	DFA REVENUE TAX DIVISION MANAGER ..	25
079Z	HLTH CHIEF ENGINEER	25
118Z	DHS NURSING SERVICES ADMINISTRA- TOR	25
122Z	DFA ACCOUNTING MANAGER	25
180Z	MEN HLTH ASSOCIATE DIRECTOR, AHC ...	25
201Z	DDSSA ASST DIR FOR ADMIN/FISCAL SVC	25
247Z	ED VO TECH SCHOOL DIRECTOR	25
296Z	G&F ADMINISTRATOR	25
316Z	HLTH DIR RAD CONTROL & EMERG MGMT	25
341Z	HLTH ASSOCIATE BUREAU DIRECTOR	25
351Z	HLTH DIR ENVIR HLTH PROTECTION	25
362Z	HLTH DIR HLTH FACILITY SVCS/SYST	25

CLASS	TITLE	GRADE
364Z	HLTH NURSING DIRECTOR	25
388Z	ASST STATE GEOLOGIST	25
397Z	DHS/DCFS ADMIN COMMUNITY SVCS	25
419Z	HLTH DIR PUBLIC HEALTH LABS	25
474Z	MEN HLTH PSYCHOLOGIST ADMINISTRA- TOR	25
512Z	DFA REVENUE PROBLEM RESOLUTION OFR	25
559Z	PRKS & TRSM PARKS ADMIN MANAGER ...	25
586Z	DEQ ADMINISTRATOR MANAGEMENT SVCS	25
592Z	DEQ CHIEF MINING DIVISION	25
595Z	DEQ CHIEF HAZARDOUS WASTE DIV	25
596Z	DEQ CHIEF SOLID WASTE DIVISION	25
597Z	DEQ CHIEF TECHNICAL SVCS DIV	25
598Z	ENVIRONMENTAL CHIEF CONST ASST DI- VISION	25
632Z	ADEM DEP DIR CHF FIELD OPNS	25
637Z	STATE POLICE MAJOR	25
650Z	REHAB ASST COMM ADMIN SVCS	25
691Z	SBS DEP DIR FIN & ADMIN	25
692Z	SBS STATE CONSTRUCTION ADMR	25
695Z	SBS ADMR OF REAL ESTATE SERVICES ...	25
797Z	COMPUTER APPLICATIONS MANAGER	25
878Z	DHS/DCFS ADMR PRGM OPS	25
880Z	DHS/DCFS ADMR PRGM SUPPORT	25
886Z	DHS/DCFS ADMR ADMIN SVCS	25
906Z	ADED RESEARCH MANAGER	25
910Z	LIVE & POUL ASSISTANT DIRECTOR	25
915Z	ADEQ PROGRAM CHIEF	25
916Z	ASP FISCAL OFFICER	25
977Z	STATE ENERGY DEPUTY DIRECTOR	25
984Z	PSC TELECOMM UTILITIES SEC MGR	25
988Z	ASSOCIATE DIR - INVESTMENTS	25
997Z	MUSEUM SERVICES DIRECTOR	25
A021	BANK ASSISTANT CHIEF EXAMINER	25
A022	CERTIFIED FINANCIAL EXAMINER	25
A026	INTERNAL AUDIT ASST ADMINISTRATOR ..	25
D008	DIS DATA BASE ANALYST II	25
D033	DIS SYSTEMS PROGRAMMER/ANALYST II ..	25
D054	DIS PROG ANA/STAFF SPECIALIST II	25
D088	DP PRODUCTION MANAGER II - INST	25
D097	ASST DIR OF COMPUTER SVCS III-INST ...	25
D108	OIT DATA BASE ANALYST II	25

CLASS	TITLE	GRADE
D120	DFA AASIS SOFTWARE SYSTEMS ANALYST II	25
D131	BANK IT ADMINISTRATOR	25
L011	DIRECTOR PHARMACY	25
L012	PHARMACIST II	25
L124	PSYCHOLOGIST	25
P306	PRKS & TRSM REGIONAL PARK SUPV	25
Q016	EGG & POULTRY DIVISION MANAGER	25
R011	SECURITIES ASSISTANT COMMISSIONER ..	25
R016	CLASS B CHIEF PUBLIC DEFENDER	25
R034	INS ADMR PREPAID FUNERAL BENEFITS ..	25
R052	ADM OFC OF CRT-LEGAL SPEC	25
R053	APPELLATE ATTORNEY	25
R092	CODIS ADMINISTRATOR/DNA SUPERVI- SOR	25
R170	ATTORNEY SPECIALIST	25
R187	DFA ASST ADMIN/BUDGET ANALYSIS	25
R328	PRKS & TRSM DIR RESEARCH & INFO SVC	25
R379	STATE ECONOMIC DEVELOPER III	25
Z718	UAF DIR OF HOUSING	25
Z723	UAF DIR OF PURCHAS & MATERIALS MGMT	25
Z774	UALR DIRECTOR OF PUBLIC SAFETY	25
Z848	UAMS PURCHASING AGENT	25
Z924	UCA DIRECTOR OF PUBLIC SAFETY	25
014Z	ATEB PROGRAM DIRECTOR	24
035Z	ETV PRODUCTION DIVISION DIRECTOR ...	24
036Z	AREC DEPUTY EXECUTIVE DIRECTOR	24
040Z	DHS/DCFBS AREA MANAGER	24
042Z	DIRECTOR - MINORITY HEALTH COMM	24
044Z	COR CONSTRUCTION/MAINTENANCE COORD.....	24
045Z	SOIL & WATER FISCAL ADMINISTRATOR ..	24
066Z	EDUCATION COMMUNICATION MGR	24
074Z	WRKS COMP PUB EMP BEN DET ASST DIR	24
075Z	BUREAU OF STANDARDS ASST DIRECTOR	24
076Z	HSRC MEDICAL SERVICES MANAGER	24
089Z	OCSE DIVISION MANAGER	24
110Z	A&D ABUSE PREV ASST DEP DIR/PRG DEV	24
113Z	A&D ABUSE PREV ASST DEP DIR/ADM SVC	24
115Z	COR WARDEN I	24
154Z	DFA MARKETING & REDISTRIB MGR	24
160Z	DFA STATE PAYROLL SYSTEMS MANAGER	24
162Z	DFA PROCUREMENT MANAGER	24

CLASS	TITLE	GRADE
164Z	DFA RACING COMMISSION MANAGER	24
175Z	DFA STATE EMPLOYEE INSURANCE MGR ..	24
187Z	DHS/DCFS ADMR INDIV & FAMILY SVCS ...	24
188Z	A&D ABUSE PREV ASST DEP DIR/DIR SVC	24
203Z	DDSSA ASST DIR-UNIT OPERATIONS	24
211Z	ETV MARKETING DIVISION DIRECTOR	24
249Z	ETV EDUCATIVE SERVICES DIV DIRECTOR	24
250Z	ED STATE LIBRARY DEP DIR FOR ADMIN ..	24
252Z	ED STATE LIBRARY DEP DIR INFO RSCS	24
288Z	ETV PROGRAMMING DIVISION DIRECTOR	24
292Z	ETV ADMIN AND FINANCE DIV DIR	24
297Z	GENERAL BUSINESS MANAGER	24
361Z	HLTH MEDICAL CARE SVCS ADMR	24
400Z	ADFA FISCAL MANAGER	24
403Z	YOUTH SERVICES CENTER SUPT	24
408Z	MANUFACTURED HOMES COMM DIRECTOR	24
424Z	HLTH PUB HLTH AREA MANAGER	24
434Z	DHS INSTITUTION OPERATIONS MANAGER	24
500Z	DAH DIR OF DELTA CULTURAL CENTER ...	24
533Z	DAH NATURAL HERITAGE COMM DIR	24
534Z	DAH ARTS & HUMANITIES DIRECTOR	24
535Z	DAH OLD STATE HOUSE MUSEUM DIR	24
537Z	DAH HISTORIC ARKANSAS MUSEUM DIR ..	24
557Z	PRKS & TRSM FOLK CENTER MANAGER ..	24
591Z	DEQ DIVISION CHIEF	24
620Z	ACIC SYSTEMS ADMINISTRATOR	24
622Z	STATE POLICE FISCAL OFFICER	24
630Z	MILITARY FISCAL/PERSONNEL OFFICER ..	24
649Z	REHAB ASST ADMINISTRATOR-HSRC	24
651Z	REHAB CHIEF OF SPECIAL PROGRAMS	24
652Z	REHAB ASST COMM STAFF SVCS	24
694Z	SBS BUILDING OPERATIONS ADMR	24
710Z	ESD AREA OPERATION CHIEF	24
711Z	ESD DIVISION CHIEF	24
716Z	ESD ASSISTANT ADMINISTRATOR	24
751Z	VETERANS AFFAIRS ASSISTANT DIR	24
752Z	VETERANS HOME SUPERVISOR	24
804Z	DIS FISCAL MANAGER	24
819Z	DAH HIST PRESERVATION DIRECTOR	24
821Z	DDSSA ASST DIR - QUALITY ASSURANCE ..	24

CLASS	TITLE	GRADE
871Z	MEN HLTH SOCIAL WORK ADMINISTRA- TOR	24
901Z	ED SCHOOL INSURANCE ADMINISTRA- TOR	24
903Z	TECHNICAL ASSISTANCE MANAGER	24
921Z	DFA DIVISION MANAGER III	24
935Z	DAH-DIRECTOR MOSAIC TEMPLARS CTN ..	24
962Z	CC/COR ACCOUNTING SUPERVISOR	24
973Z	LABOR SAFETY ADMINISTRATOR	24
992Z	DIRECTOR OF FIELD OPERATIONS	24
A013	DFA SEPSI FISCAL OFFICER	24
A033	INTERNAL AUDIT SPECIALIST	24
A049	PRKS & TRSM REV OPERATIONS MANAG- ER	24
A125	DFA ACCOUNTING SUPPORT SYSTEM MGR	24
A130	BANK REVIEW ADMINISTRATOR	24
A198	PSC SENIOR RATE CASE ANALYST	24
A200	PSC OPERATIONS MANAGER	24
A252	DHE FINANCIAL MANAGER	24
A254	PUBLIC UTILITY AUDIT MANAGER	24
B015	SENIOR PETROLEUM GEOLOGIST	24
B044	CHIEF FORENSIC QUESTIONED DOC EXAM	24
B046	CHIEF FORENSIC TOXICOLOGIST	24
B048	CHIEF FORENSIC CHEMIST	24
B050	CHIEF FORENSIC SEROLOGIST	24
D011	DP NETWORK MANAGER III - INST	24
D021	DIS DATA COMMUNICATION MANAGER	24
D028	DIS PROGRAMMER ANALYST/STAFF SPEC	24
D039	DIS PRODUCTION CONTROL MANAGER ...	24
D041	BANK SR. IS EXAMINER	24
D062	SYSTEMS ANALYST III - INST	24
D064	SR SYSTEMS PROGRAMMER	24
D068	SYSTEMS PROGRAMMER III - INST	24
D087	DIS TELECOMMUNICATIONS SVCS MGR . .	24
D096	ASST DIR COMPUTER SVCS II - INST	24
D099	OIT PROGRAMMER ANALYST/STAFF SPEC	24
D116	DFA AASIS FI/HR LEAD SYSTEM ANALYST	24
D130	INFORMATION SYSTEMS ADMINISTRA- TOR	24
D133	DHS APPLICATIONS MANAGER	24
D135	DFA AASIS CUSTOMER RELATIONS MAN- AGER	24

CLASS	TITLE	GRADE
D142	SECURITY ANALYST II	24
E020	CURRICULUM DIRECTOR	24
F002	ETV CHIEF ENGINEER	24
L005	PHARMACIST I	24
L084	PATIENT CARE SUPERVISOR	24
L096	SR PHARMACIST	24
L112	PSYCH RESIDENT	24
M042	DHS/DCO COUNTY ADMINISTRATOR IV	24
N339	CHIEF LATENT PRINTS EXAMINER	24
P302	PARK SUPERINTENDENT V	24
R006	ASST RISK MANAGEMENT ADMR	24
R029	CLASS B PUBLIC DEFENDER	24
R036	ATTORNEY	24
R050	PUBLIC SERVICE COMM RURAL LIAISON ..	24
R069	ED STATISTICAL ANALYST & RESEARCH- ER	24
R078	PRKS & TRSM MRKTING & PROMOTION DIR	24
R080	STATISTICAL ANALYSIS MANAGER	24
R135	ED COORD RESEARCH & STATISTICS	24
R287	OUTDOOR REC GRANTS PRGM DIR	24
R475	SR BUDGET ANALYST/SPECIALIST	24
R482	PSC CHIEF, PIPELINE SAFETY	24
T007	STATE POLICE CAPTAIN	24
T009	HE PUBLIC SAFETY COMMANDER III	24
T046	CRIME LAB CHIEF FIREARM/TOOL EXAM	24
T053	CRIME LAB CHIEF CRIMINALIST	24
X328	DEQ ASST CHIEF WATER POLLUTION	24
X339	ENGINEER SUPERVISOR	24
Z486	UAMS ACCOUNTING MANAGER	24
Z488	UAMS DIR OF PATIENT RELATIONS	24
Z500	UAF ASSOC DIR OF PHYSICAL PLANT	24
Z725	UAF DIR OF STUDENT UNION	24
002Z	ATRS PROGRAM MGR/MEMBER SVCS	23
008Z	PUB DEFENDER NETWORK ADMINISTRA- TOR	23
013Z	WIB MONITOR	23
015Z	ASST STATE FORESTER	23
028Z	ED APSCN COOR/INTERNAL OPS	23
030Z	AREC ASST DEPUTY DIRECTOR	23
032Z	PSC TAX DIV ASST DIR/MOTOR CAR PROG	23
043Z	DIRECTOR OF SECONDARY CENTER	23
050Z	PLANT BOARD DIRECTOR MARKETING	23
051Z	PLANT BOARD DIRECTOR PLANT IND	23

CLASS	TITLE	GRADE
055Z	DP MANAGER	23
058Z	PROPERTY ASSESSMENT COORD MGR	23
065Z	OCSE FIELD MANAGER	23
070Z	SECURITIES CHIEF EXAMINER	23
091Z	ASST WARDEN	23
108Z	COR MEDICAL/DENTAL ADMR	23
117Z	COR AGRI PRODUCTION SUPERVISOR	23
126Z	STATE REGISTRAR VITAL RECORDS	23
138Z	DFA DIVISION MANAGER II	23
143Z	FED SURPLUS PROPERTY MGR	23
146Z	DFA HUMAN RESOURCES MGR	23
181Z	COMPLIANCE ADMINISTRATOR	23
185Z	DFA TRAINING PROJECT MANAGER	23
189Z	HLTH PUB HLTH AREA NURSING DIR	23
192Z	DFA MERIT SYSTEM MANAGER	23
196Z	COR BOOT CAMP ADMINISTRATOR	23
227Z	ED COORD CHAPTER I PROGRAMS	23
233Z	ED DIR CHILD NUTRITION PROGRAMS	23
237Z	ED COORD SPECIAL EDUCATION	23
238Z	ED COORD TEACHER EDUC, CERT & TEST	23
243Z	ED COORD VOC PLANNING & EVAL	23
299Z	G&F ASSISTANT DIVISION CHIEF	23
303Z	REHAB CHIEF - HR DEVELOPMENT & TRAINING	23
323Z	HLTH ASST DIR DIV PUBLIC HEALTH NSG	23
384Z	HLTH HUMAN RESOURCES MANAGER	23
409Z	LABOR CODE ENFORCEMENT ADMINIS- TRATOR	23
410Z	LABOR FINANCE & PERSONNEL MANAGER	23
422Z	HLTH DIR HLTH MAINT/PUB HLTH PRGM	23
482Z	ED VO TECH SCHOOL ASST DIR	23
483Z	HLTH DIR HOME HEALTH	23
564Z	PRKS & TRSM PERSONNEL MANAGER	23
608Z	PERS MEMBER SERVICES MANAGER	23
610Z	PERS PROG MGR/ADMIN SVCS	23
638Z	DEPUTY DIRECTOR ACADEMY OPERA- TIONS	23
640Z	DEPUTY DIRECTOR STANDARDS DIVI- SION	23
717Z	ESD PERSONNEL MANAGER	23
766Z	WRKS COMP PROGRAM MANAGER	23
817Z	DAH NATURAL & SCENIC RIVERS DIR	23

CLASS	TITLE	GRADE
822Z	HLTH RURAL HLTH PRGM ADMINISTRATION	23
836Z	COORDINATOR OF CHAPTER II	23
837Z	ED COORD VOC INSTRUCTIONAL PROGRAMS	23
845Z	ED COORD ADULT ED PROGRAMS	23
870Z	MEN HLTH FACILITY ADMINISTRATOR	23
874Z	HLTH COMPTROLLER	23
897Z	DHS INSTITUTION PROGRAM MANAGER ..	23
911Z	IFID FISCAL OFFICER	23
913Z	PLANT BOARD DIRECTOR FEED/SEED	23
923Z	DHS PRGM ADMINISTRATOR	23
990Z	ED COORD STUDENT ASSESSMENT PROGRAM	23
995Z	DFA FEDERAL GRANTS SYSTEMS MANAGER	23
A007	INSURANCE CONSUMER SVCS ADMIN	23
A014	BANK SENIOR EXAMINER	23
A058	TEACHER RET MGR BENEFITS & COUNSEL	23
A059	RETIREMENT MANAGER/SUPV MEMBERSHIP	23
A123	ED INTERNAL AUDITOR	23
A127	ASST CONTROLLER	23
A140	INSURANCE SENIOR EXAMINER	23
A143	INSURANCE LICENSING ADMIN	23
A150	TAX DIVISION ASSISTANT DIRECTOR	23
A197	SR RISK SPECIALIST	23
A255	TEACHER RET INVEST ADMR-AR RELATED	23
B012	CHEMIST SUPERVISOR	23
B016	G&F CHIEF RIVER BASINS & GOV	23
B021	FORENSIC CHEMIST SUPERVISOR	23
B040	HLTH PUB HLTH LAB SECTION DIRECTOR	23
B068	MICROBIOLOGIST SUPV	23
B106	GEOLOGY SUPERVISOR	23
B108	PETROLEUM GEOLOGIST	23
D006	DIS DATA BASE ANALYST I	23
D031	DIS SYSTEMS PROGRAMMER/ANALYST I ..	23
D045	DIS LEAD PROGRAMMER/ANALYST	23
D046	SYSTEMS APPLICATIONS SUPERVISOR	23
D053	DATA BASE COORD II - INST	23
D080	APPLICATIONS & SYSTEMS MANAGER	23
D085	DP PRODUCTION MGR I - INST	23

CLASS	TITLE	GRADE
D095	ASST DIR COMPUTER SVCS I - INST	23
D100	DP SENIOR PROJECT LEADER	23
D102	OIT LEAD PROGRAMMER ANALYST	23
D127	TELECOMMUNICATIONS PLANNING SPEC II	23
D134	DFA AASIS SOFTWARE SYSTEMS ANALYST I	23
E015	ED SCHOOL PRINCIPAL	23
E018	HLTH PUB HLTH ED MANAGER	23
E102	ED CURRICULUM SUPV-VOCATIONAL	23
L003	HLTH DIR NUTRITION SERVICES	23
M011	FAMILY SERVICE WORKER PRINCIPAL	23
M040	DHS/DCO COUNTY ADMINISTRATOR III ...	23
M092	HLTH SOC SVC PROGRAM DIRECTOR	23
M122	EVAL/ADMISSIONS/HLTH SVCS MGR	23
M178	DHS/DDS ASST SUPT - CONWAY	23
N297	PRKS & TRSM TOURISM EDITOR	23
N300	TOURISM DEVELOPMENT MANAGER	23
N301	TOURISM GROUP TRAVEL MANAGER	23
N330	LICENSED ARCHITECT	23
N334	COR ASST TO THE DIR/PUB RELATIONS ...	23
P301	PRKS & TRSM PROGRAM SVC ADMR	23
P303	PARK SUPERINTENDENT IV	23
Q001	EGG & POULTRY AREA SUPERVISOR	23
Q011	HLTH ASST DIR SANITARIAN SERVICES ...	23
Q020	HAZARDOUS WASTE INSPECTOR SUPV ...	23
Q037	DIRECTOR PROTECTIVE HEALTH CODES ..	23
Q042	DISTRICT LIVESTOCK INSPECTION MGR ..	23
R017	PERS INFORMATION SERVICES MANAGER	23
R039	AREC CHIEF INVESTIGATOR	23
R045	AREC LICENSING SUPERVISOR	23
R051	HLTH DIR EMERGENCY HLTH SVCS	23
R056	HLTH PUB HLTH NURSING PROGRAM ADMR	23
R063	EDUCATION CURRICULUM SUPERVISOR ..	23
R067	EDUCATION RESEARCH SPECIALIST	23
R089	DDSSA HR AND LEGAL COMPLIANCE MGR	23
R151	AERONAUTICS ASSISTANT DIRECTOR	23
R165	DHS CLIENT ADVOCATE	23
R179	DDSSA PROFESSIONAL RELATIONS MGR ..	23
R184	NURSING SERVICES UNIT MANAGER	23
R191	DFA SENIOR PERSONNEL SUPERVISOR ...	23
R316	WRKS COMP PUB EMP BEN DET MGR	23

CLASS	TITLE	GRADE
R378	STATE ECONOMIC DEVELOPER II	23
R480	PSC CHIEF, QUALITY OF SERVICE	23
R485	SBS HUMAN RESOURCE MANAGER	23
T011	STATE POLICE LIEUTENANT	23
T015	PAROLE/PROBATION AREA MANAGER	23
T020	HE PUBLIC SAFETY COMMANDER II	23
T064	WORK RELEASE CENTER SUPV III	23
V062	ASST PURCHASING ADMINISTRATOR	23
X302	HLTH DIR MEDICARE CERTIFICATION	23
X325	DDSSA CLAIMS HEARING MANAGER	23
Z003	ASU ASSOC DIR PHYSICAL PLANT	23
Z007	HSU DIRECTOR PUBLIC SAFETY	23
Z060	UAF ASSOC DIR OF AR UNION	23
Z467	SAU DIRECTOR OF PUBLIC SAFETY	23
Z482	UAF ENERGY CONSERVATION & MGMT ENGR	23
Z492	UAF DIR OF RISK MGMT & INSURANCE ...	23
Z505	ASU ENGINEERING COMM FACILITIES DIR	23
Z506	ASU CONSTRUCTION COORDINATOR	23
Z513	ASU DIRECTOR OF HOUSING	23
Z520	ASU PURCHASING AGENT	23
Z705	UAF ENGINEERING MANAGER	23
Z708	UAF ASSOC TREASURER	23
Z714	UAF CONSTRUCTION COORDINATOR	23
Z721	UAF DIR OF PRINTING	23
Z733	UAF ASSOC REGISTRAR	23
Z773	UALR PURCHASING AGENT	23
Z821	UAMS ASSOC DIR OF PHYSICAL PLANT ...	23
Z834	UAMS DIR OF COMMUNICATIONS SVCS ...	23
Z842	UAMS DIR OF SOCIAL SERVICE	23
Z844	UAMS INSTRUMENTATION ENGINEER	23
Z895	UAPB DIRECTOR OF PUBLIC SAFETY	23
Z916	UCA DIRECTOR OF HOUSING	23
Z919	UCA CONSTRUCTION COORDINATOR	23
Z922	UCA PURCHASING AGENT	23
Z943	UAMS CONSTRUCTION COORDINATOR ...	23
Z945	UAF ASST BUSINESS MANAGER	23
Z946	UAF ASST CONTROLLER	23
001Z	DFA MGR PURCHASE & PROP MGMT	22
062Z	ED PERSONNEL MANAGER	22
088Z	ADEM FIRE SVCS ADMINISTRATOR	22
114Z	COR CLASSIFICATION ADMINISTRATOR ...	22
119Z	CC/COR PERSONNEL MANAGER	22

CLASS	TITLE	GRADE
147Z	DISTRICT FORESTER	22
161Z	STATE LIBRARY SERVICES COORDINATOR	22
174Z	REHAB PROG PLNG & DEVELOP MANAG- ER	22
184Z	FORESTRY FISCAL OFFICER	22
219Z	HLTH COMM DISEASE/IMMUNIZ PROG MGR	22
220Z	HLTH PERINATAL HLTH PRGM MANAGER	22
229Z	ED COORD INSTRUCTIONAL MATERIALS ..	22
235Z	ED COORD SCHOOL PLANT SERVICES	22
506Z	REHAB SERVICES PERSONNEL MANAGER	22
660Z	DSB VENDING FACILITY PROG ADMR	22
698Z	DHS/DAS MATERIALS MGMT ADMR	22
699Z	DHS/DCO FIELD MANAGER	22
744Z	ESD EQUAL OPPORTUNITY MANAGER	22
795Z	ESD MANAGER II	22
840Z	ED VOC ED PROGRAM SUPPORT MGR	22
904Z	REHAB PROGRAM ADMINISTRATOR	22
908Z	MLK COMMISSION EXECUTIVE DIREC- TOR	22
909Z	PROGRAM SUPPORT MANAGER	22
914Z	DFA STATE PURCHASING CARD ADMINIS- TRATOR	22
918Z	SBS REAL ESTATE MGR	22
975Z	DHS WEATHERIZATION PROGRAM ADMIN	22
981Z	PUBLIC DEFENDER COM PERSONNEL MGR	22
A020	MEDICAL COST ACCOUNTING SUPERVI- SOR	22
A023	LIQUIDATION & REHAB OFFICER	22
A032	AGENCY FISCAL MANAGER	22
A044	SECURITIES EXAMINER SUPERVISOR	22
A047	GENERAL FINANCE COORDINATOR	22
A072	PUBLIC UTILITY AUDITOR SUPERVISOR ..	22
A073	DFA ACCOUNTING SUPERVISOR	22
A088	DHS FINANCIAL SECTION MANAGER	22
A095	DHS AUDIT SUPERVISOR	22
A121	PSC TAX DIV FINANCIAL ANALYST	22
B006	SR EPIDEMIOLOGIST	22
B014	PROFESSIONAL GEOLOGIST	22
B017	G&F BIOLOGIST SUPERVISOR	22
B023	DEQ CHIEF ECOLOGIST	22
B053	FORENSIC BIOLOGIST	22
B055	FORENSIC TOXICOLOGIST	22

CLASS	TITLE	GRADE
B057	FORENSIC CHEMIST	22
B058	MEDICAL TECHNOLOGIST III	22
B073	FORENSIC QUESTIONED DOC EXAMINER II	22
B086	HLTH CHEMIST SUPERVISOR	22
B089	HLTH MICROBIOLOGIST SUPERVISOR	22
B099	ENVIRONMENTAL PROGRAM MANAGER ..	22
B102	NATURAL AREA CHIEF PLANNER	22
D009	DP NETWORK MANAGER II - INST	22
D012	NETWORK PLANNING PROJECT LDR	22
D029	DIS SENIOR PROGRAMMER/ANALYST	22
D038	SYSTEMS PROGRAMMER	22
D051	COMPUTER SUPPORT SPEC III-INST	22
D060	SYSTEMS PROGRAMMER II - INST	22
D066	SYSTEMS COORDINATION ANALYST II	22
D067	SYSTEMS ANALYST II - INST	22
D072	DP OPERATIONS SUPV III - INST	22
D074	BANK JUNIOR DP EXAMINER	22
D093	DP NETWORK TECH III - INST	22
D105	OIT SR PROGRAMMER/ANALYST	22
D106	DP OPERATIONS MANAGER	22
D113	DIS TELECOMMUNICATIONS SUPERVI- SOR	22
D115	INFORMATION SYSTEMS PLANNER	22
D117	DFA FI/HR SYSTEM ANALYST II	22
D124	LEAD PROGRAMMER/ANALYST	22
D139	DIS TELECOMM APPLICATIONS SPEC	22
D143	SECURITY ANALYST I	22
E010	COR TRAINING ADMINISTRATOR	22
E051	TRAINING PROJECT MANAGER	22
E057	TEACHER F/T SENSORY IMPAIRED SUPV ..	22
J008	STATE FOREST MANAGER	22
L007	REHAB COORD OF PSYCH SERVICES	22
L009	HLTH PUB HLTH NURSE SUPERVISOR	22
L074	REGISTERED NURSE PRACTITIONER II	22
L078	NURSE SUPERVISOR	22
L094	PHARMACIST	22
M009	FAMILY SERVICE WORKER SUPERVISOR ..	22
M010	CAREER PLNG & PLAC COORDINATOR	22
M012	CHILD CARE DIRECTOR	22
M018	PUBLIC DEF OMBUDSMAN COORDINA- TOR	22
M032	DHS/DCO COUNTY SUPV IV	22
M038	DHS/DCO COUNTY ADMINISTRATOR II	22

CLASS	TITLE	GRADE
M071	SPINAL CORD COMM CLIENT SVCS ADMR	22
M087	DHS/DCFS FIELD MANAGER	22
M118	MEN HLTH DIR OF CMTY SUPPORT PROG	22
N284	DFA EMPLOYEE BENEFIT DIV COMM MGR	22
N298	PRKS & TRSM MUSEUM DIRECTOR	22
N336	LATENT PRINTS EXAMINER	22
P332	PARK SUPERINTENDENT III	22
Q004	OCCUPATIONAL HYGIENIST SUPERVISOR	22
Q006	DEQ PERMIT SUPERVISOR	22
Q032	HLTH PHYSICIST SUPERVISOR	22
Q034	HLTH PUB HLTH INVESTIGATION MAN- AGER	22
Q038	DIRECTOR HVACR SECTION	22
Q078	HEALTH ENVIRONMENTAL SUPV	22
Q092	LABOR CHIEF BOILER INSPECTOR	22
Q102	SANITARIAN SVCS PROGRAM ADMR	22
Q120	POL C INSPECTOR SUPV	22
R031	ED SUPERVISOR MIGRANT EDUCATION ...	22
R033	COR INTERNAL AFFAIRS ADMINISTRATOR	22
R046	SR BUDGET ANALYST	22
R047	PUBLIC DEFENDER PERSONNEL MAN- AGER	22
R055	HLTH PUB HLTH NURSING PROGRAM COORD	22
R058	DDS PERSONNEL MANAGER	22
R077	DAH HIST PRESERVATION ASST DIR	22
R079	ASST DIR ABC	22
R081	MILITARY PERSONNEL MANAGER	22
R088	HIGHER ED FINANCIAL OFFICER	22
R094	ASB/ASD PERSONNEL MANAGER	22
R096	HIGHER ED ASST COORD STUD FIN AID ...	22
R118	DIS PERSONNEL MANAGER	22
R119	PATIENT BUSINESS SERVICES MANAGER	22
R127	ENERGY CONSERVATION PROGRAM ADMR	22
R129	DAH ASST DIR ARTS & HUMANITIES	22
R130	DFA PERSONNEL SUPERVISOR	22
R159	STATE LIBRARY EXT SVCS COORD	22
R181	DDSSA QUALITY ASSURANCE MANAGER ..	22
R185	DAH MUSEUM ASSISTANT DIRECTOR	22
R199	ASST DIR OF RURAL SERVICES	22
R205	LIBRARY NETWORK SERVICES COORD	22
R215	G&F PERSONNEL MANAGER	22

CLASS	TITLE	GRADE
R438	VETERANS HOME ASSISTANT SUPERVISOR	22
R484	WRKS COMP CLAIMS MANAGER	22
R498	ADFA FINANCE PROGRAM COORDINATOR	
V003	PROCUREMENT MANAGER	22
V013	SBS LEASING COORD	22
V042	GENERAL SERVICES MANAGER	22
W007	HLTH DIR RECORDS MGMT	22
X301	PUB DEF COMM INVESTIGATOR	22
X327	ASP/CACD INVESTIGATOR ADMINISTRATOR	22
X338	ENGINEER, PE	22
X344	ASP/CACD HOTLINE ADMINISTRATOR	22
X428	SBS CONTRACT & CONST MGR	22
X456	PSC RATE CASE ENGINEER	22
Y008	SBS MAINT & OPER MANAGER	22
Y009	HLTH DIR PLUMBING	22
Y013	MILITARY FACILITIES SUPERVISOR	22
Y023	CRIME LAB INSTRUMENTATION ENGINEER	22
Y026	COR CONSTRUCTION/MAINT SUPV II	22
Z476	UAF PLANT MAINTENANCE ENGINEER ...	22
Z503	ASU ASST DIRECTOR OF PHYSICAL PLANT	22
Z511	ASU DIRECTOR OF FARMING	22
Z518	ASU DIRECTOR OF STUDENT UNION	22
Z532	ASU ENGINEER/DESIGN SPECIALIST	22
Z760	UALR ASST DIR OF PHYSICAL PLANT	22
Z768	UALR DIRECTOR OF INFORMATION	22
Z822	UAMS ASST DIR OF PHYSICAL PLT	22
Z826	UAMS PAYROLL SERVICES MANAGER	22
Z829	UAMS CHIEF MEDICAL ILLUSTRATOR	22
Z855	UAMS CHIEF INSTRUCTIONAL TV	22
Z910	UCA ASST DIRECTOR OF PHYSICAL PLANT	22
Z917	UCA DIRECTOR OF PERSONNEL	22
Z947	UAF PAYROLL SERVICES MANAGER	22
Z950	UAF FOOD SVC MANAGER - UNION	22
005Z	FINANCIAL AID DIRECTOR - TI	21
167Z	DFA DIVISION MANAGER I	21
417Z	LABOR SAFETY COORDINATOR	21
480Z	MEN HLTH PERSONNEL MANAGER	21
683Z	REHAB DIR SVCS FOR DEAF & HEAR IMP	21

CLASS	TITLE	GRADE
686Z	REHAB SPECIAL PROGRAM ADMINISTRA- TOR	21
697Z	DHS PRGM MANAGER	21
799Z	ESD MANAGER I	21
809Z	DHS PLANNING & POLICY DEV COORD	21
892Z	DHS INSTITUTION BUSINESS MANAGER ..	21
949Z	COR INDUSTRY PRGM TRADE SPEC SUPV	21
A003	SCIENCE & TECH FINANCE PROG MGR	21
A008	ACCOUNTING SUPERVISOR II	21
A057	OES ADMINISTRATIVE OFFICER	21
A067	DFA ACCOUNTING SPECIALIST	21
A068	DFA INTERNAL AUDIT MANAGER	21
A075	FINANCIAL ANALYST II	21
A079	SR CERTIFIED RATE AND FORM ANALYST	21
A097	RETIREMENT COUNSELOR SUPERVISOR ..	21
A098	SENIOR SECURITIES EXAMINER	21
A104	TAX AUDITOR SUPERVISOR	21
A116	RATE ANALYST III	21
A117	G&F LICENSING SUPERVISOR	21
A132	APERS MANAGER/SUPERVISOR MEMBER- SHIP	21
A164	RETIREMENT FUND INVESTMENT SUPV ..	21
A251	SR AUDITOR	21
B026	G&F BIOLOGIST III	21
B032	SR GEOLOGIST	21
B042	PLANT BOARD SEED LAB MANAGER	21
B094	BUREAU OF STANDARDS LAB SUPV	21
B126	WATER USE & RESOURCE SPECIALIST	21
C002	WIB COMMUNICATIONS MANAGER	21
C003	WIB BUSINESS AND INDUSTRY LIAISON ..	21
D010	DATA BASE ANALYST	21
D026	DIS OPERATIONS TECH SPECIALIST	21
D036	SR PROGRAMMER/ANALYST	21
D052	DATA BASE COORD I - INST	21
D056	SBS DATA SYSTEMS MANAGER	21
D122	USER SUPPORT SUPERVISOR	21
D123	APPLICATIONS & SYSTEMS ANALYST	21
D136	DFA AASIS TRAINING SPECIALIST II	21
D138	DIS SR COMPUTER/DATA OPER SUPV	21
D140	DFA AASIS TECHNICAL WRITER	21
E008	ADEM TRAINING PROJECT MANAGER	21
E013	G&F INFO & ED COORD	21
E023	DHS/DDS LANGUAGE DEVELOP SUPV	21
E028	ED PROGRAM ADMINISTRATOR	21

CLASS	TITLE	GRADE
E031	TRAINING ACADEMY STAFF ADMR	21
E040	NURSE INSTRUCTOR SUPERVISOR	21
E049	INDUSTRIAL COORDINATOR	21
E064	TV CURRICULUM UTILIZATION COORD	21
E067	INSTITUTION MULTI-MEDIA SVCS DIR	21
E104	DHS/DDS ED & TRNG CONSULTANT	21
E108	ETV ADULT EDUCATION COORDINATOR . .	21
E110	LAW ENFORCE ACADEMY TRAINING SUPV	21
F036	TV PRODUCER	21
F046	ETV CREATIVE SERVICES SUPERVISOR ...	21
H001	COR COMMODITY & FOOD SVC ADMR	21
J006	FOREST REFORESTATION MANAGER	21
J010	NURSERY SUPERVISOR	21
L002	ASST DIR DIETARY SVCS	21
L010	AUDIOLOGIST SUPERVISOR	21
L017	NUTRITIONIST SUPERVISOR	21
L019	NUTRITIONIST CONSULTANT	21
L030	DIETARY SERVICES DIRECTOR	21
L072	REGISTERED NURSE PRACTITIONER I	21
L082	NURSING SERVICES SPECIALIST	21
L090	OCCUPATIONAL THERAPY SUPERVISOR ...	21
L106	PHYSICAL THERAPY SUPV	21
L122	PSYCHOLOGICAL EXAMINER II	21
L142	SPEECH PATHOLOGIST SUPV	21
M006	ASST DIR COMMUNITY SERVICES	21
M014	ADMINISTRATOR OF CHAPLAINCY SVCS ..	21
M022	DHS/DCO COUNTY ADMINISTRATOR I	21
M029	DHS/DCO COUNTY SUPV III	21
M033	ATEB OUTREACH MONITOR	21
M046	DHS/DDS TEAM LEADER-CONWAY	21
M051	MEN HLTH DIR OF SOCIAL SERVICES	21
M066	REHAB FIELD SUPERVISOR	21
M081	DHS PRGM SPEC FOR DUALY DIAGNOSED	21
M085	DHS/DCFS PRGM ADMINISTRATOR	21
M090	CAMPUS LIFE COORDINATOR	21
M100	VOCATIONAL COUNSELOR	21
M112	COTTAGE LIFE PROGRAM DIRECTOR	21
M113	VOLUNTEER PROGRAM MANAGER	21
N287	COORDINATOR OF CRIME PREVENTION ...	21
N293	DEVELOPMENT SPECIALIST	21
N312	MUSEUM ARCHIVIST CONSERVATOR	21
N322	DFA SUPPORT SERVICES MANAGER	21

CLASS	TITLE	GRADE
N326	FORESTRY INFORMATION & ED MANAGER	21
N340	CHIEF FORENSIC PHOTOGRAPHER	21
N344	G&F MEDIA SPEC/VIDEOGRAPHER	21
N349	G&F HUNTER ED COORDINATOR	21
N374	INTERGOVERNMENTAL ENERGY COORD ..	21
P331	PARK SUPERINTENDENT II	21
Q070	HLTH PUB HLTH INVESTIGATOR SUPV	21
Q077	HEALTH ENVIRONMENTAL SPEC III	21
Q094	LABOR CHIEF MINE INSPECTOR	21
Q098	PLANT BOARD INSPECTION MANAGER	21
Q108	POL C HAZARDOUS WASTE INSPECTOR ...	21
Q110	MGR GRAIN WRHSE & CATFISH PROC SECT	21
R008	ACD RES & ADM MANAGER	21
R023	NUCLEAR PLNG & RESPONSE MANAGER ..	21
R026	ASST DIR OF PRINTING	21
R027	ED COORD PLANNING & EVALUATION	21
R028	ED PROGRAM ANALYST	21
R065	LABOR MEDIATOR	21
R074	MEN HLTH COMMUNITY SERVICES COORD	21
R075	KEEP ARKANSAS BEAUTIFUL DIRECTOR ..	21
R102	RURAL CONSTRUCTION GRANT/FIN OFCR	21
R103	VICTIM/WITNESS COORDINATOR	21
R111	ESD PROGRAM OPERATIONS MANAGER ...	21
R115	OFFICE ON AGING PROGRAM SUPERVISOR	21
R120	PARK PLANNER	21
R121	PRKS & TRSM ASST PERSONNEL MGR	21
R123	DFA POLICY COORDINATOR	21
R128	PERSONNEL REPRESENTATIVE II	21
R137	ED INTERNAL SERVICES MANAGER	21
R139	DFA FINANCIAL ADVISOR	21
R141	DHS/DCO QUALITY CONTROL MANAGER ..	21
R143	DHS RESEARCH & STATISTICS MGR	21
R160	BANK TRAINING & EMPLOYMENT SVCS MGR	21
R172	INTERSTATE COMPACT ADMR	21
R193	ADEM PROGRAM OPERATIONS MANAGER	21
R202	ASST DIR FEED, FERT, PEST	21
R214	SEED CERTIFICATION MANAGER	21
R224	DIRECTOR HEALTH STATISTICS	21
R260	LIBRARY PROGRAM ADVISOR	21
R268	MEDICAL ECONOMIST	21
R286	PEST CONTROL MANAGER	21

CLASS	TITLE	GRADE
R288	PUBLIC SCHOOL ADMIN ADVISOR	21
R290	PUBLIC SCHOOL PROGRAM ADVISOR	21
R298	AGENCY PROGRAM COORDINATOR	21
R306	REHAB PROG & PLAN DIR	21
R310	VETERANS PROGRAM ADVISOR	21
R324	DDSSA UNIT SUPERVISOR	21
R326	QUALITY ASSURANCE COORDINATOR	21
R333	ED SUPV VOCATIONAL EQUITY PROGRAM	21
R346	PLANT BOARD APIARY MANAGER	21
R348	COMMUNITY DEVELOPMENT CONSUL- TANT	21
R356	INDUSTRIAL CONSULTANT	21
R376	DEQ ENFORCEMENT ADMINISTRATOR	21
R377	STATE ECONOMIC DEVELOPER I	21
R386	RURAL FIRE DEFENSE ADMR	21
R401	UNIVERSITY PRESS PROMOTION MGR	21
R403	UNIVERSITY PRESS PRODUCTION MGR ...	21
R460	ENVIRONMENTAL PLANNING SECTION MGR	21
R462	DEQ PROGRAM COORD SECTION MGR	21
R471	SCIENCE & TECH RESEARCH PROG COORD	21
R473	DDPC COORDINATOR	21
R474	INSTITUTION PERSONNEL SVCS MAN- AGER	21
R488	GRANTS ADMIN SUPV	21
T001	COR INSTITUTIONAL PAROLE ADMR	21
T002	PAROLE/PROBATION ASST AREA MGR	21
T008	CC/COR OFFICER IV	21
T019	MILITARY DEPT DEPUTY FIRE CHIEF	21
T023	HE PUBLIC SAFETY COMMANDER I	21
T033	STATE POLICE CORPORAL	21
T040	WILDLIFE OFFICER III	21
T058	MILITARY DEPUTY FIRE CHIEF	21
T066	WORK RELEASE CENTER SUPV II	21
T076	DCC PROGRAM COORDINATOR	21
T079	MGR DIVERSION INVESTIGATION UNIT ...	21
V007	REAL ESTATE OFFICER	21
V012	PURCHASING MANAGER	21
V014	DHS/DCO COMMODITY SERVICES MAN- AGER	21
V016	COR PROCUREMENT & PROPERTY MAN- AGER	21

CLASS	TITLE	GRADE
V080	MGR PURCHASING & PROPERTY MGT	21
X305	HLTH FACILITY CERT SURVEYOR	21
X317	ASP DL/CDL COORDINATOR	21
X320	ASP/CACD INVESTIGATOR SUPERVISOR ...	21
X324	DDSSA CLAIMS HEARING OFFICER II	21
X341	ENGINEER II	21
X367	TCB AUDITOR/INVESTIGATOR	21
X410	LAND RESOURCE SPECIALIST SUPERVI- SOR	21
Y004	ASP FLEET MANAGER	21
Y010	CHIEF STATE ELECTRICAL INSPECTOR ...	21
Y011	DAH MANAGER OF HISTORIC PROPERTIES	21
Y012	PARK PROJECT MANAGER	21
Y018	COR ASST HEAD FARM MANAGER	21
Y020	COR INDUSTRY PRGM MANAGER	21
Z004	ATU FINANCIAL ANALYST	21
Z005	ATU GRANT MANAGER	21
Z011	SAU DIRECTOR OF HOUSING	21
Z012	UAM ASST DIR OF PHYSICAL PLANT	21
Z058	PUBLIC SAFETY ADMINISTRATOR-UAM ...	21
Z059	SAU PURCHASING AGENT	21
Z466	UAF FOOD SVC ASST DIR - PURCHASING ..	21
Z468	UAF FOOD SVC ASST DIR - PERSONNEL ...	21
Z469	SAU DIRECTOR OF PERSONNEL	21
Z473	ASU ASST DIRECTOR OF FOOD SERVICE ..	21
Z493	UALR ASSOCIATE REGISTRAR	21
Z526	UALR ASSOC DIR OF ADMISS & REC	21
Z570	ATU ASST DIR OF PHYSICAL PLANT	21
Z577	ATU DIRECTOR OF HOUSING	21
Z578	ATU DIRECTOR OF INFORMATION	21
Z581	ATU PURCHASING AGENT	21
Z584	ATU DIRECTOR OF PERSONNEL	21
Z610	HSU ASST DIR OF PHYSICAL PLT	21
Z616	HSU DIRECTOR OF HOUSING	21
Z618	HSU DIRECTOR OF PERSONNEL	21
Z623	HSU PURCHASING AGENT	21
Z670	SAU ASST DIRECTOR OF PHYSICAL PLT ...	21
Z675	SAU DIRECTOR OF INFORMATION	21
Z717	UAF DIR OF HOUSEKEEPING	21
Z736	UAF SPORTS INFORMATION COORDINA- TOR	21
Z772	UALR DIRECTOR OF STUDENT UNION	21

CLASS	TITLE	GRADE
Z793	UAM DIRECTOR OF HOUSING	21
Z796	UAM PURCHASING AGENT	21
Z820	UAMS AHEC/BUSINESS OFFICER	21
Z830	UAMS CHIEF OF PHOTOGRAPHIC SERVICE	21
Z833	UAMS DEPARTMENT BUSINESS OFFICER .	21
Z858	UAMS MCPG MANAGER	21
Z880	UAPB ASST DIR OF PHYSICAL PLT	21
Z886	UAPB DIRECTOR OF INFORMATION	21
Z887	UAPB DIRECTOR OF PERSONNEL	21
Z888	UAPB DIRECTOR OF HOUSING	21
Z892	UAPB PURCHASING AGENT	21
Z896	UAPB PROGRAM DIRECTOR	21
Z913	UCA DIRECTOR OF ALUMNI	21
Z928	WCC PURCHASING AGENT	21
Z929	WCC PUBLIC SAFETY ADMINISTRATOR	21
Z941	WCC DIRECTOR OF PERSONNEL/EEO	21
Z952	UAF PURCHASING AGENT	21
109Z	COR NURSING DIRECTOR	20
912Z	STAFF FORESTER	20
A001	INDUSTRIAL APPRAISAL SPECIALIST	20
A006	ACCOUNTING SUPERVISOR I	20
A010	CERTIFIED RATE & FORM ANALYST	20
A011	MARKET CONDUCT EXAMINER	20
A018	MEDICAL COST ACCOUNTANT	20
A036	FIELD AUDITOR SUPERVISOR	20
A037	DFA REVENUE DISTRICT MANAGER	20
A038	FINANCIAL ANALYST	20
A041	DFA MGR STATE CLEARINGHOUSE	20
A042	FINANCIAL EXAMINER II	20
A048	INSURANCE EXAMINER	20
A056	INTERNAL AUDITOR	20
A061	SENIOR INVESTMENT SPECIALIST	20
A062	SENIOR RETIREMENT COUNSELOR	20
A069	DFA TAX ADMIN SECTION SUPERVISOR ...	20
A076	PUBLIC UTILITY AUDITOR II	20
A085	HLTH BUDGET & FUND CONTROL MAN- AGER	20
A090	SECURITIES EXAMINER	20
A099	FINANCE AUTHORITY SPECIALIST SUPV ..	20
A102	TAX AUDITOR II	20
A124	ACCOUNTING SERVICES REP II	20
A145	INSURANCE CONSUMER SVCS SUPV	20
A182	INSURANCE RISK SPEC	20
A186	COR BUDGET MANAGER	20

CLASS	TITLE	GRADE
A190	INCOME TAX AUDITOR SUPERVISOR	20
A250	JR AUDITOR	20
B003	EPIDEMIOLOGIST	20
B010	CHEMIST II	20
B018	G&F GAME RESEARCH BIOLOGIST	20
B036	SEED ANALYST SUPERVISOR	20
B056	MEDICAL TECHNOLOGIST II	20
B066	MICROBIOLOGIST II	20
B070	MEDICAL EXAMINER CASE COORDINATOR	20
B080	DEQ ECOLOGIST II	20
B090	RESEARCH TECHNOLOGIST II	20
B101	FIELD ECOLOGIST II	20
C018	ESD COMMUNICATIONS & MEDIA OFFICER	20
C020	COMMUNICATIONS SYSTEMS MANAGER ..	20
D001	DP NETWORK MANAGER I - INST	20
D019	DIS DATA COMMUNICATIONS TECH II	20
D050	COMPUTER SUPPORT SPEC II - INST	20
D055	WEBSITE COORDINATOR II	20
D058	DIS INFO CENTER ANALYST II	20
D059	SYSTEMS PROGRAMMER I - INST	20
D065	SYSTEMS ANALYST I - INST	20
D075	DP INFORMATION SYS COORD - INST	20
D086	ACIC SYSTEMS COORDINATION ANALYST	20
D092	DP NETWORK TECH II - INST	20
D118	DFA FI/HR SYSTEM ANALYST I	20
D121	USER SUPPORT ANALYST	20
D126	TELECOMMUNICATIONS PLANNING SPEC I	20
D137	DFA AASIS TRAINING SPECIALIST I	20
E002	SAFETY TRAINING OFFICER	20
E007	SR REHAB TEACHER F/T BLIND	20
E009	SR ORIENTATION & MOBILITY SPEC	20
E012	COR INDUSTRIAL SUPV II	20
E026	INSTITUTIONAL INSTRUCTOR SUPERVI- SOR	20
E038	NURSE INSTRUCTOR	20
E044	PUB HLTH EDUCATOR SUPERVISOR	20
E073	LAW ENFORCE TRAINING INSTRUCTOR ...	20
E077	TEACHER F/T SENSORY IMPAIRED IV	20
E078	VOCATIONAL INSTRUCTOR IV	20
E100	COR TRAINING ACADEMY SUPERVISOR ...	20
E112	WEATHERIZATION TRAINING COORD	20
E114	STAFF DEVELOPMENT COORDINATOR	20

CLASS	TITLE	GRADE
E124	LAW ENFORCE STANDARDS SPECIALIST ..	20
G007	SBS BUILDING & PLANT MAINTENANCE COORD	20
G104	CONSTRUCTION/MAINTENANCE COORD ..	20
G120	PLANT MAINTENANCE COORDINATOR	20
G122	PLANT MAINTENANCE ENGINEER	20
G197	SBS BUILDING MAINT PRGM COORD	20
G214	DIRECTOR MAINTENANCE	20
J003	AVIATION MANAGER	20
L008	SR AUDIOLOGIST	20
L016	CLINICAL DIETITIAN	20
L034	HOME HEALTH NURSE II	20
L070	NURSE II	20
L088	OCCUPATIONAL THERAPIST II	20
L104	PHYSICAL THERAPIST II/PHYSICAL THER	20
L130	REGISTERED NURSE II	20
L140	SPEECH PATHOLOGIST II	20
L146	STUDENT HEALTH SVC NURSE II	20
L156	HLTH PUB HLTH NURSE II	20
L193	MEDICAL REHAB REPRESENTATIVE	20
M005	FAMILY SERVICE WORKER SPECIALIST ...	20
M013	DEVELOPMENTAL DISABILITIES SPEC II ..	20
M016	SR CHAPLAIN	20
M027	DHS/DCO COUNTY SUPV II	20
M028	COUNSELOR II	20
M030	PUBLIC DEF OMBUDSMAN/SW	20
M045	COR REHAB FACILITY SUPERVISOR	20
M064	REHAB FACILITY SUPERVISOR	20
M088	SOCIAL WORKER II	20
M115	SUBSTANCE ABUSE PROGRAM COORD	20
M116	UTILIZATION REVIEW NURSE	20
M127	SR REHABILITATION COUNSELOR	20
M128	DHS/DDS PRGM COORDINATOR	20
M140	DHS/DDS TEAM LEADER	20
M172	ASST DIR FINANCIAL AID	20
N281	ARCHITECT INTERN	20
N282	EXHIBITS SPECIALIST	20
N283	SCIENCE & TECH COMMUNICATIONS MGR	20
N289	ARCHIVAL MANAGER	20
N295	FOLKLIFE DIR OZARK FOLK CENTER	20
N318	CURATOR	20
N320	G&F EDITOR	20
N324	EDITOR	20

CLASS	TITLE	GRADE
N333	MEDIA SPECIALIST	20
N370	ARCHITECTURAL HISTORIAN	20
N372	ARCHEOLOGIST	20
N378	POULTRY PRODUCTS SPECIALIST	20
P305	STATE TRAILS COORDINATOR	20
Q002	LABOR AOSH INSPECTOR SUPERVISOR	20
Q008	LABOR SAFETY CONSULTANT SUPERVISOR	20
Q012	BOILER ASSISTANT CHIEF	20
Q030	HLTH PHYSICIST	20
Q039	HVACR INSPECTOR SUPERVISOR	20
Q046	MEDICARE/MEDICAID SURVEY SPECIALIST	20
Q048	MANUFACTURED HOUSING SPEC SUPV ...	20
Q058	PLUMBING INSPECTOR SUPV	20
V067	DFA MARKETING & REDISTRIB SUPV	20
W006	MEN HLTH REGISTRAR	20
W014	DIRECTOR MEDICAL RECORDS	20
W038	RECORDS MANAGEMENT COORD	20
X303	ACIC INFORMATION SYSTEM AGENT	20
X304	ABC SR ENFORCEMENT OFFICER	20
X308	PUBLIC DEFENDER INVESTIGATOR	20
X311	DHS/DDS PRGM EVALUATOR SUPV	20
X313	REVENUE INVESTIGATOR/FRAUD AUDITOR	20
X314	DEQ AIR COMPLIANCE MONITOR	20
X323	WRKS COMP COMPLIANCE OFFICER	20
X326	DDSSA QUALITY CONTROL ANALYST	20
X335	OCCUPATIONAL SAFETY COORDINATOR ..	20
X337	ENGINEER	20
X340	DDSSA CLAIMS HEARING OFFICER I	20
X347	ASP/CACD SR INVESTIGATOR	20
X354	OIL & GAS TECHNICIAN II	20
X356	DDSSA FRAUD INVESTIGATOR	20
X360	DDSSA CASE CONSULTANT	20
X365	CRIMINAL INSURANCE FRAUD INVESTIGATOR	20
X369	TCB ENFORCEMENT AGENT SUPERVISOR	20
X390	PROPERTY ASSESSMENT AUDITOR SUPV ..	20
X394	SCHOOL INSURANCE SPECIALIST	20
X398	SURVEYOR	20
X403	OIL & GAS DIST PETROLEUM TECH	20
Y006	ENERGY CONSERVATION COORD	20

CLASS	TITLE	GRADE
Y025	PRINT SHOP MANAGER	20
Y046	INSTRUMENTATION ENGINEER	20
Y092	SBS MAINT & CONSTRUCTION PROJ MGR	20
Y116	MAINTENANCE SYSTEMS SUPV	20
Y123	COR CONSTRUCTION ELECTRICAL SUPV ..	20
Y125	COR CONSTRUCTION PLUMBER SUPV	20
Y127	COR CONSTRUCTION REFRIGERATION SUPV	20
Z002	SACC DIRECTOR OF PERSONNEL/EEO	20
Z006	ATU PAYROLL SERVICES MANAGER	20
Z009	PUL TECH COLLEGE DIR OF PURCHASING	20
Z010	SAU DIRECTOR OF STUDENT UNION	20
Z061	NWCC DIRECTOR OF PERSONNEL	20
Z450	EACC DIRECTOR OF PERSONNEL/EEO	20
Z470	UAMS REIMBURSEMENT SPECIALIST	20
Z474	ASU STUDENT ACCOUNTS OFFICER	20
Z475	ASU-B DIRECTOR OF PERSONNEL/EEO	20
Z509	ASU PAYROLL SERVICES MANAGER	20
Z512	ASU DIRECTOR OF HOUSEKEEPING	20
Z517	ASU ASST DIRECTOR OF FARMING	20
Z525	ASU-B DIRECTOR OF PURCHASING	20
Z551	ASU-B DIRECTOR OF INFORMATION	20
Z574	ATU DIRECTOR OF ALUMNI	20
Z613	HSU DIRECTOR OF ALUMNI	20
Z620	HSU DIRECTOR OF SCHL & UNIV RELA	20
Z622	HSU DIRECTOR OF STUDENT UNION	20
Z651	NACC DIRECTOR OF PERSONNEL/EEO	20
Z662	SAU DIRECTOR OF ALUMNI AFFAIRS	20
Z673	SAU COORD DESEGREGATION & AFFIRM ACTN	20
Z704	UAF ASST DIRECTOR OF INFORMATION ...	20
Z738	UAF CATERING MANAGER	20
Z765	UALR DIRECTOR DESEG & AFFIRM ACTION	20
Z767	UALR PAYROLL SERVICES MANAGER	20
Z777	UALR DIRECTOR OF HOUSING	20
Z792	UAM COORD DESEGREGATION & AFFIRM ACTN	20
Z797	UAM DIRECTOR OF STUDENT UNION	20
Z799	UAM DIRECTOR OF ALUMNI	20
Z883	UAPB PAYROLL SERVICES MANAGER	20

CLASS	TITLE	GRADE
Z891	UAPB DIRECTOR OF STUDENT UNION	20
Z912	UCA COORD DESEGREGATION & AFFIRM ACTN	20
Z914	UCA DIRECTOR OF HOUSEKEEPING	20
Z925	UCA STUDENT ACCOUNTS OFFICER	20
Z927	WCC DIRECTOR OF INFORMATION	20
Z930	WCC DIRECTOR OF ALUMNI	20
Z944	ASU ASST REGISTRAR	20
Z951	UAF PLANT MAINTENANCE COORDINA- TOR	20
Z956	UAMS ANIMAL RESEARCH FACILITY MGR	20
A004	STUDENT ACCOUNTS OFFICER-UAM	19
A017	STUDENT ACCOUNTS OFFICER-ATU	19
A019	STUDENT ACCOUNTS OFFICER-HSU	19
A025	STUDENT ACCOUNTS OFFICER-UAPB	19
A035	STUDENT ACCOUNTS OFFICER-SAU	19
A060	INVESTMENT SPECIALIST	19
A080	RATE ANALYST II	19
A087	BUDGET OFFICER	19
A101	SR GRAIN FIELD AUDITOR	19
A103	FIELD AUDITOR	19
A110	ACCOUNTANT II	19
A113	RETIREMENT COUNSELOR	19
A122	ACCOUNTING SERVICES REP I	19
A133	CRIME LAB FISCAL OFFICER	19
A154	ESD FIELD TAX REP III	19
B009	FOREST ENTOMOLOGIST	19
B024	BIOLOGIST II	19
B030	GEOLOGIST	19
B060	MEDICAL TECHNOLOGIST SUPERVISOR .	19
B100	FIELD ECOLOGIST	19
B111	G&F FORESTRY PROGRAM MANAGER	19
C001	TELECOMMUNICATIONS MANAGER	19
D020	DP SUPERVISOR II	19
D044	APPLICATIONS PROGRAMMER II - INST ...	19
D063	DIS PRODUCTION SCHEDULER II	19
D071	DP OPERATIONS SUPV II - INST	19
D076	DIS PROGRAMMER/ANALYST	19
D079	DIS DOCUMENTATION SPECIALIST	19
D125	DHS DP OPERATIONS COORDINATOR	19
D132	SYSTEMS COORDINATION ANALYST I	19
D141	DFA AASIS HELP DESK COORDINATOR	19
E014	DIRECTOR MULTI-MEDIA SERVICES	19
E034	ARCHIVIST	19

CLASS	TITLE	GRADE
E039	LIBRARIAN III	19
E042	PUB HLTH EDUCATOR	19
E045	REHAB STAFF DEVELOPMENT SPECIALIST	19
E047	REHAB TEACHER FOR THE BLIND	19
E063	TEACHER F/T SENSORY IMPAIRED III	19
E068	TRAINING & EDUCATION COORD EMER SVC	19
E074	TRAINING REPRESENTATIVE	19
E076	VOCATIONAL INSTRUCTOR III	19
E094	DAY CARE TEACHER SUPERVISOR	19
E118	HABILITATION/REHAB INSTRUCTOR SUPV	19
E136	ORIENTATION & MOBILITY SPECIALIST ...	19
E138	PRKS & TRSM DIR ED & PUB PRGMS	19
F003	CHIEF TV ENGINEER	19
F010	RADIO PROGRAM DIRECTOR	19
G009	SBS BUILDING & PLANT MAINTENANCE SUPV	19
G012	MILITARY HOUSING MANAGER	19
G026	BLDG AND GROUNDS COORDINATOR	19
G106	MAINTENANCE PLANNER	19
G209	TRANSIT OPERATIONS SUPERVISOR	19
H030	CC/COR FOOD PRODUCTION MGR II	19
K043	HEARING REPORTER	19
K188	PSC MANAGER, COMM DOCKETS	19
L015	NUTRITIONIST	19
L028	DIETICIAN	19
L032	HEALTH PROGRAM CONSULTANT	19
L120	PSYCHOLOGICAL EXAMINER I	19
M004	FAMILY SERVICE WORKER	19
M007	ASST DIR ADMISSIONS	19
M008	CAREER PLNG & PLAC ADVISOR	19
M019	CHAPLAIN	19
M025	DHS/DCO COUNTY SUPV I	19
M044	DHS PRGM CONSULTANT	19
M056	REHAB COUNSELOR III	19
M057	DHS/DDS FOSTER GRANDPARENT ADMR ..	19
M069	REHAB SVC FACILITY SPECIALIST	19
M086	SOCIAL WORKER I	19
M097	VOLUNTEER PROGRAM DEVELOPER II	19
M107	COR COUNSELING PROGRAM LEADER	19
M114	SUBSTANCE ABUSE PROGRAM LEADER ...	19
M138	YOUTH SERVICES COUNSELOR III	19

CLASS	TITLE	GRADE
M154	DHS FIELD REPRESENTATIVE	19
M160	DHS/DCFS FIELD SVCS REP	19
M164	QUALITY CONTROL REVIEW SUPV	19
N199	TAXPAYER INFORMATION OFFICER	19
N285	TOURIST INFORMATION CENTER MGR II ..	19
N292	HISTORIC SITES SPECIALIST	19
N294	MUSEUM PROGRAMS SPECIALIST	19
N310	CARTOGRAPHER SUPV	19
N315	COORDINATOR OF INFORMATION SER- VICES	19
N317	COORDINATOR OF SPORTS INFORMA- TION	19
N347	TOURISM CONSULTANT	19
N350	ETV PROGRAM DEPARTMENT SUPERVI- SOR	19
N368	HISTORIAN	19
P312	FACILITY MANAGER IV	19
P329	PARK SUPERINTENDENT I	19
Q013	BOILER INSPECTOR	19
Q015	LABOR OSHA COMPLIANCE SUPERVISOR	19
Q026	EGG & POULTRY FIELD INSPECTOR SUPV	19
Q036	CHIEF ELEVATOR INSPECTOR	19
Q040	AREA LIVESTOCK INSPECTOR SUPV	19
Q054	PEST CONTROL INSPECTOR SUPV	19
Q066	BLASTING INSPECTOR	19
Q068	PUB HLTH INVESTIGATOR II	19
Q074	HEALTH ENVIRONME	19
R168	GRANTS COORDINATOR II	19
R174	MUSEUM CONSULTANT	19
R204	PARALEGAL/LEGAL ASSISTANT	19
R206	OCSE PROGRAM CONSULTANT	19
R207	OCSE STAFF SUPERVISOR	19
R209	LIBRARY SUPERVISOR II	19
R280	ENVIRONMENTAL PROGRAM COORDINA- TOR	19
R304	REHAB VOCATIONAL CONSULTANT	19
R315	VETERANS AFFAIRS EXEC ASST TO DIR ...	19
R332	DHS POLICY DEVELOPMENT COORD	19
R344	ESD SATELLITE OFFICE SUPERVISOR	19
R400	WRKS COMP PUB EMP BEN DET ASST MGR	19
R412	REHAB PROGRAM PLANNING COORDINA- TOR	19
R424	FAIR HEARING REFEREE	19

CLASS	TITLE	GRADE
R456	HMO MEDICAL CONTRACT COORD	19
R494	ASSOCIATE BOOKSTORE MANAGER	19
T010	CC/COR SERGEANT	19
T017	PARK RANGER II	19
T018	AGRI UNIT SUPERVISOR I	19
T022	LIVE & POUL CHIEF INVESTIGATOR	19
T029	SR MILITARY FIREFIGHTER	19
T036	WILDLIFE OFFICER I	19
T039	STATE POLICE TROOPER	19
T055	UNIFORM COMMANDER	19
T065	HLTH PHYSICS TECHNOLOGIST	19
T068	WORK RELEASE CENTER SUPV I	19
T074	PUBLIC SAFETY DIRECTOR	19
T075	RECORDS/INTAKE SUPV	19
V002	BUYER	19
V008	BUYER III	19
V022	LEASING SPECIALIST II	19
V036	DFA PURCHASING CARD COORDINATOR ..	19
V060	CENTRAL WAREHOUSE SUPERVISOR	19
W012	MEDICAL RECORDS ADMINISTRATOR	19
W026	HLTH RECORDS SPECIALIST	19
X306	CHIEF CONSTRUCTION INSPECTOR	19
X309	DHS/DDS PRGM EVALUATOR	19
X321	ASP/FPU INVESTIGATOR	19
X334	ASP/CACD HOTLINE SUPERVISOR	19
X358	HLTH FACILITY SURVEYOR	19
X408	LAND RESOURCE SPECIALIST	19
X438	PSC UTILITY SERVICES SUPERVISOR	19
X440	DDSSA CLAIMS ADJUDICATOR III	19
Y002	ASST DIR PHYSICAL PLANT	19
Y015	AVIATION TECHNICIAN	19
Y030	SKILLED TRADES FOREMAN	19
Y031	ESD PRINT SHOP SUPERVISOR	19
Z001	SAU DIRECTOR OF HOUSEKEEPING	19
Z008	ATU DIRECTOR OF HOUSEKEEPING	19
Z481	HSU DIRECTOR OF HOUSEKEEPING	19
Z485	UAM DIRECTOR OF HOUSEKEEPING	19
Z501	ASU ASST DIRECTOR OF HOUSING	19
Z502	ASU ASST DIRECTOR OF INFORMATION ...	19
Z508	UCA ASSISTANT DIRECTOR OF HOUSING ..	19
Z790	ATU ASST DIR OF FOOD SERVICES	19
Z926	WCC BOOKSTORE MANAGER	19
A029	DFA REVENUE SECTION SUPERVISOR	18
A040	FINANCIAL EXAMINER I	18

CLASS	TITLE	GRADE
A043	DFA CASHIER SPECIALIST	18
A070	ESD FIELD TAX REP II	18
A071	REVENUE AGENT IV	18
A074	PUBLIC UTILITY AUDITOR I	18
A077	STUDENT LOAN OFFICER	18
A078	RATE ANALYST I	18
A094	SECURITIES CUSTODIAN	18
A096	FINANCE AUTHORITY SPECIALIST	18
A100	TAX AUDITOR I	18
A111	ACCOUNTANT	18
A114	CC/COR BUSINESS MANAGER	18
A118	GRAIN FIELD AUDITOR	18
A142	RATE & FORM ANALYST	18
A176	DFA REVENUE ASST DIST MANAGER	18
A192	INCOME TAX AUDITOR	18
A194	TAX EXAMINER SUPV	18
B008	CHEMIST I	18
B013	CRIME LAB AUTOPSY TECHNICIAN SUPV	18
B025	SEED ANALYST III	18
B054	MEDICAL TECHNOLOGIST I	18
B063	METROLOGIST	18
B064	MICROBIOLOGIST I	18
B065	CRIME LAB HISTOLOGY TECHNICIAN SUPV	18
B071	MOISTURE METER LABORATORY TECH ...	18
B072	FORENSIC QUESTIONED DOC EXAMINER I	18
B088	RESEARCH TECHNOLOGIST I	18
C006	COMMUNICATIONS SUPERVISOR	18
C037	ASP TELECOMMUNICATIONS SUPERVI- SOR	18
D016	DIS DATA COMMUNICATIONS TECH I	18
D032	JR SYSTEMS PROGRAMMER	18
D034	PROGRAMMER ANALYST	18
D047	DIS LEAD COMPUTER TECHNICIAN	18
D049	COMPUTER SUPPORT SPEC I - INST	18
D057	DIS INFO CENTER ANALYST I	18
D070	WEBSITE COORDINATOR I	18
D084	DIS TELECOMMUNICATION TECH III	18
D090	OPERATIONS ANALYST	18
D091	DP NETWORK TECH I - INST	18
D128	P C SUPPORT SPECIALIST	18
D129	DP COORDINATOR	18
E011	COR INDUSTRIAL SUPV	18

CLASS	TITLE	GRADE
E024	INSTITUTIONAL INSTRUCTOR II	18
E037	LIBRARIAN II	18
E050	STAFF DEVELOPMENT SPECIALIST II	18
E053	COR UNIT TRAINING SUPERVISOR	18
E061	TEACHER F/T SENSORY IMPAIRED II	18
E062	STUDENT ADVISOR	18
E072	TRAINING INSTRUCTOR	18
E082	VOCATIONAL INSTRUCTOR II	18
F006	TV MICROWAVE SPECIALIST	18
F008	ETV VIDEO TECHNICIAN II	18
F011	RADIO PRODUCTION ENGINEER	18
F012	UPLINK COORDINATOR	18
F014	ETV BROADCAST SPEC. I	18
F034	TV MODERATOR/ON CAMERA TALENT	18
F045	TV TRANSMITTER SUPERVISOR	18
G004	RECYCLING/SOLID WASTE MGMT COORD	18
G028	BLDG PLANT MAINTENANCE SUPV II	18
G031	CONSTRUCTION/MAINTENANCE PROJ EST	18
G050	FABRICATIONS SHOP MANAGER	18
G124	PLANT MAINTENANCE SUPV	18
H032	FOOD PRODUCTION MANAGER	18
J001	ARK FORESTRY COMM INVESTIGATOR	18
J022	FORESTER II	18
J023	G&F FORESTER II	18
L033	HOME HEALTH NURSE I	18
L036	CERTIFIED RESPIRATORY THERAPY TECH	18
L038	AUDIOLOGIST	18
L068	NURSE I	18
L086	OCCUPATIONAL THERAPIST I	18
L092	ORTHOTIST	18
L102	PHYSICAL THERAPIST I	18
L138	SPEECH PATHOLOGIST I	18
L144	STUDENT HEALTH SVC NURSE I	18
L149	X-RAY TECH III	18
L154	HLTH PUB HLTH NURSE I	18
M003	FAMILY SERVICE WORKER TRAINEE	18
M024	FAMILY SUPPORT SPECIALIST SUPV	18
M026	COUNSELOR I	18
M050	RECREATIONAL ACTIVITY LEADER SUPV	18
M054	REHAB COUNSELOR II	18
M068	DHS PROGRAM ANALYST	18
M072	SOCIAL SERVICE INVESTIGATOR II.....	18

CLASS	TITLE	GRADE
M075	SOCIAL SERVICE REPRESENTATIVE II	18
M076	SOCIAL SERVICE REPRESENTATIVE III . . .	18
M078	DHS/DEMS SUPERVISOR	18
M082	SOCIAL SERVICE WORKER III	18
M093	FINANCIAL AID OFFICER II	18
M096	CC/COR PROGRAM COORD	18
M098	VETERANS CLAIMS SPECIALIST	18
M099	COTTAGE LIFE PROGRAM SUPERVISOR . .	18
M105	CC/COR COUNSELOR	18
M106	VOCATIONAL REHAB EVALUATOR II	18
M117	COORDINATOR OF INTERPRETIVE SVCS . .	18
M124	DEVELOPMENTAL DISABILITIES SPEC I . .	18
M136	YOUTH SERVICES COUNSELOR II	18
M156	ADOPTION SPECIALIST	18
M168	CHILD CARE LICENSING SPECIALIST	18
M170	QUALITY CONTROL REVIEWER	18
N280	TRAVEL INFORMATION WRITER II	18
N288	HISTORICAL RESEARCHER	18
N313	COORDINATOR OF ALUMNI AFFAIRS	18
N314	MUSEUM INTERPRETIVE SPECIALIST	18
N328	INFORMATION OFFICER II	18
N342	FORENSIC PHOTOGRAPHER	18
N346	MUSIC PROGRAM & PROMOTIONAL COORD	18
N360	PUBLIC AFFAIRS SPECIALIST	18
N365	PUBLICITY & STUDENT RECRUIT SPEC II	18
N380	CHIEF PHOTOGRAPHER	18
P304	ASST DIR STUDENT UNION	18
P325	PARK INTERPRETER	18
P338	STUDENT UNION MANAGER	18
Q022	SR EGG & POULTRY FIELD INSPECTOR . . .	18
Q024	BRUCellosis TESTING COORD	18
Q033	LIQUIFIED PETROLEUM GAS INSPECTOR	18
Q045	HVACR MECHANICAL INSPECTOR	18
Q047	MANUFACTURED HOUSING SPEC	18
Q057	PLUMBING INSPECTOR	18
Q062	HAZARDOUS CHEMICAL TRAINER/INSPEC	18
Q073	SAFETY INSPECTOR	18
Q104	EMERG MEDICAL SERVICES SPEC	18
Q122	PLUMBING PLANS REVIEW COORDINA- TOR	18
R014	ATEB ADMINISTRATIVE ASSISTANT	18
R018	ASST ADMINISTRATOR PROF SVCS	18

CLASS	TITLE	GRADE
R022	ASST BUSINESS MANAGER	18
R032	ASST REGISTRAR	18
R035	ED VOC ED EXECUTIVE ASSISTANT	18
R057	WIB ADMIN ASST	18
R072	COR SALES REPRESENTATIVE	18
R124	PERSONNEL ASSISTANT II - INST	18
R134	PLANNING SPECIALIST II	18
R169	ESD EMPLOYMENT SERVICES REP	18
R183	COMMUNITY PUNISHMENT SPECIALIST ..	18
R195	PERSONNEL ANALYST	18
R196	PROPERTY DISPOSITION COORD	18
R203	OCSE PROGRAM ANALYST	18
R237	ESD PROGRAM SUPERVISOR	18
R264	MANAGEMENT PROJECT ANALYST I	18
R275	PATIENT BUSINESS SERVICES SUPV	18
R322	CC/COR UNIT PERS & TRNG OFFICER	18
R327	ESD RESEARCH & ANALYSIS ANALYST	18
R329	PAYROLL SERVICES SPECIALIST	18
R458	PRINTING ESTIMATOR/PLANNER	18
T005	CC/COR OFFICER II	18
T012	DISCIPLINARY HEARING OFFICER	18
T028	MILITARY RANGE OFFICER	18
T044	CHIEF CRIME LAB FIELD INVESTIGATOR	18
T059	PUB SAFETY INVEST & TRNG OFCR	18
T062	PAROLE/PROBATION OFFICER	18
T063	PRKS & TRSM CHIEF RANGER	18
T069	DRUG DIVERSION INVESTIGATOR	18
T071	HE PUBLIC SAFETY OFFICER II	18
V006	BUYER II	18
V020	LEASING SPECIALIST	18
V023	REAL PROPERTY MANAGEMENT SPECIAL- IST	18
V025	RURAL FIRE PROGRAM COORDINATOR	18
V034	PLANT WAREHOUSE FOREMAN	18
V040	PURCHASE AGENT II/PURCHASE AGENT ..	18
V044	SPECIFICATIONS SPEC	18
W009	CC/COR RECORDS SUPERVISOR	18
W030	RECORDS MANAGEMENT ANALYST II	18
X299	DOT CORROSION PROGRAM SPECIALIST ..	18
X310	ESD TECHNICIAN II	18
X315	CONSTRUCTION INSPECTOR	18
X316	ABC ENFORCEMENT OFFICER	18
X346	ESD UI CLAIM TECHNICIAN	18
X348	FIELD SERVICES REPRESENTATIVE	18

CLASS	TITLE	GRADE
X351	OCSE INVESTIGATOR II	18
X355	ESD U I INVESTIGATOR II	18
X359	INFORMATION SERVICES AGENT	18
X361	INSURANCE INVESTIGATOR	18
X371	TCB ENFORCEMENT AGENT	18
X372	PARK CONSTRUCTION INSPECTOR	18
X379	OIL & GAS TECHNICIAN	18
X386	DDSSA CLAIMS ADJUDICATOR II	18
X389	PROPERTY ASSESSMENT AUDITOR III	18
X392	SAFETY SUPERVISOR	18
X412	WEIGHTS & MEASURES INVEST SUPV	18
X422	AIRPORT INSPECTOR	18
X450	CC/COR INTERNAL AFFAIRS INVESTGTR ..	18
X459	RURAL LAND SPECIALIST	18
Y005	AUTO/DIESEL MECHANIC SUPERVISOR ...	18
Y017	CARPENTER SUPERVISOR	18
Y022	STATIONARY ENGINEER SUPERVISOR	18
Y027	ELECTRICIAN SUPERVISOR	18
Y034	SKILLED TRADES SUPERVISOR	18
Y041	HEATING & A/C MECHANIC SUPERVISOR ..	18
Y073	PAINTER SUPERVISOR	18
Y081	PLUMBER SUPERVISOR	18
Y087	PRINTER SUPERVISOR	18
Y131	CC/COR CONSTR/MAINT SUPV I	18
Z521	ASU DIRECTOR OF VENDING OPERATIONS	18
Z573	ATU COLISEUM MANAGER	18
Z661	PCCC ASST CHIEF FISCAL OFFICER	18
A034	FIELD AUDITOR	17
A045	FINANCIAL EXAMINER TRAINEE	17
A052	PSC TAX DIV VALUATION ANALYST II	17
A055	ESD FIELD TAX REP I	17
A064	FISCAL COORDINATOR	17
A105	TAX AUDITOR TRAINEE	17
A172	REVENUE AGENT III	17
B022	BIOLOGIST I	17
B038	LABORATORY ANIMAL TECHNICIAN SUPV	17
B052	MEDICAL TECHNOLOGIST	17
B078	DEQ ECOLOGIST I	17
C017	TELECOMMUNICATIONS SUPERVISOR	17
C021	TELECOMMUNICATIONS COORDINATOR ..	17
D018	DP SUPERVISOR I	17
D042	APPLICATIONS PROGRAMMER I - INST	17
D061	TELEPROCESSING MONITOR	17

CLASS	TITLE	GRADE
D069	DP OPERATIONS SUPV I - INST	17
D077	DIS PRODUCTION SCHEDULER	17
D081	DIS LIBRARY SUPERVISOR	17
E019	HUNTER SAFETY EDUC & TRNG OFFICER	17
E021	HUNTER SAFETY TRNG AREA CARETAKER	17
E022	INSTITUTIONAL INSTRUCTOR I	17
E029	MILITARY TRAINING OFFICE MGR	17
E036	LIBRARIAN I	17
E055	CC/COR UNIT TRAINER	17
E059	TEACHER F/T SENSORY IMPAIRED I	17
E080	VOCATIONAL INSTRUCTOR I	17
E086	HABILITATION/REHAB INSTRUCTOR II	17
E092	MULTI-MEDIA SPECIALIST	17
E122	AUDIOVISUAL AIDS SUPV	17
F001	ETV PRODUCTION TECHNICIAN II	17
F009	RADIO NEWS DIRECTOR	17
F027	TV ENGINEER	17
F033	TV MICROWAVE TECHNICIAN	17
F050	SPECIAL EVENTS COORDINATOR	17
G016	SBS BUILDING & PLANT MAINTENANCE WORKER	17
G040	DIRECTOR TRANSIT & PARKING	17
G053	FARM FOREMAN	17
G089	LANDSCAPE SUPERVISOR II	17
G141	WATER FILTER/WASTE DISPOS PLNT SUPV	17
G150	CENTRAL CONTROL SYSTEM SUPERVI- SOR	17
G161	GENERAL MAINTENANCE REPAIRMAN	17
H011	VENDING FACILITY PROGRAM SPECIALIST	17
H029	CC/COR FOOD PRODUCTION MGR I	17
H034	FOOD PRODUCTION MANAGER II	17
J004	AIRCRAFT PILOT	17
J013	FOREST RANGER III	17
J020	FORESTER I	17
J024	G&F FORESTER	17
K013	PRK & TRSM ARCHIVAL MICROPHOTO SUPV	17
K040	ESD UNIT SUPERVISOR II	17
L004	COR HIV/AIDS EDUCATOR	17
L044	HOME ECONOMIST	17
L117	LPN/LPTN SUPERVISOR	17

CLASS	TITLE	GRADE
M023	FAMILY SUPPORT SPECIALIST III	17
M039	HOUSEPARENT SUPERVISOR	17
M070	SOCIAL SERVICE INVESTIGATOR I	17
M080	SOCIAL SERVICE WORKER II/SOC SVC WK	17
M095	VOLUNTEER PROGRAM DEVELOPER I	17
M102	VOCATIONAL PLAC & EVAL PROG COORD	17
M125	WORK PROGRAM ADVISOR	17
M144	COR VOLUNTEER SERVICE COORDINATOR	17
M182	INTERPRETER II	17
N290	COMMERCIAL ARTIST II/GRAPHIC ART II ..	17
N299	MUSEUM REGISTRAR	17
N337	MEDICAL PHOTOGRAPHER II	17
N343	MUSEUM EXHIBIT SPECIALIST	17
N355	PHOTOGRAPHER	17
N361	PUBLICITY & INFORMATION SPECIALIST	17
N367	SPORTS INFORMATION SPECIALIST	17
N369	THEATER ARTS TECHNICAL SUPERVISOR	17
N375	PROOF EDITOR	17
P317	TOURIST INFORMATION CENTER MAN- AGER	17
P334	RECREATION COORDINATOR	17
P340	STUDENT UNION NIGHT MANAGER	17
Q010	EIA INSPECTOR	17
Q021	EGG & POULTRY FIELD INSPECTOR	17
Q027	HLTH HAZARD INVESTIGATOR	17
Q052	PEST CONTROL INSPECTOR II	17
Q055	PEST CONTROL TECHNICIAN SUPERVISOR	17
Q067	HLTH PUB HLTH INVESTIGATOR I	17
Q083	SR EGG PRODUCTS INSPECTOR	17
Q085	SR POULTRY GRADER	17
Q087	SR SHELL EGG GRADER	17
Q152	PLANT BOARD AGRI SPECIALIST I	17
R010	ADMINISTRATIVE ASSISTANT II	17
R049	CLASSIFICATION & ASSIGNMENT OFFICER	17
R061	ELECTRICIAN LICENSING COORDINATOR	17
R090	PATIENT ACCESS COORDINATOR	17
R104	LOGISTICS MANAGER	17
R110	MEDICAL PROGRAM REPRESENTATIVE	17
R140	PROGRAM ADVISOR	17
R162	STATISTICIAN/STATISTICIAN II	17
R166	GRANTS COORDINATOR I	17

CLASS	TITLE	GRADE
R186	PERSONNEL REPRESENTATIVE TRAINEE	17
R190	PERSONNEL OFFICER II	17
R211	LIBRARY SUPERVISOR I	17
R257	ESD INTERVIEWER II	17
R321	COR GRIEVANCE OFFICER	17
R402	WRKS COMP SELF INSURERS PROG COORD	17
R430	ADMINISTRATIVE OFFICER	17
T021	PARK RANGER	17
T024	LIVE & POUL INSPECTOR/INVESTIGATOR	17
T026	MILITARY FIREFIGHTER	17
T049	SECURITY OFFICER SUPERVISOR	17
T056	DRUG HANDLER INVESTIGATOR	17
V018	SURPLUS PROP INVENTORY CONTROL MGR	17
V027	EVIDENCE SUPERVISOR	17
V030	INVENTORY CONTROL MANAGER	17
V064	CONTRACT EXPEDITER	17
W002	CHIEF OF RECORDS & IDENTIFICATION . .	17
W016	MEDICAL DIAGNOSTIC ANALYST	17
W028	RECORDS MANAGEMENT ANALYST I	17
W034	UTILIZATION REVIEW COORDINATOR	17
X312	ESD TECHNICIAN I	17
X322	DDSSA CLAIMS ADJUDICATOR I	17
X331	DRIVERS LICENSE HEARING OFFICER II ..	17
X342	COMPLAINTS INVESTIGATION SUPERVI- SOR	17
X343	ASP/CACD HOTLINE OPERATOR	17
X345	LABOR STANDARDS INVESTIGATOR	17
X352	HLTH CARE ANALYST II	17
X353	ESD U I INVESTIGATOR I	17
X357	OCSE INVESTIGATOR I	17
X370	OCCUPATIONAL HYGIENIST II	17
X387	PROPERTY ASSESSMENT AUDITOR II	17
X458	ENGINEER TECHNICIAN SUPERVISOR	17
Y003	AUTO/DIESEL MECHANIC	17
Y014	PRINTER III	17
Y021	STATIONARY ENGINEER	17
Y035	SKILLED TRADES WORKER	17
Y039	HEATING & A/C MECHANIC	17
Y049	INSTRUMENTATION TECHNICIAN II	17
Y053	JOURNEYMAN CARPENTER	17
Y055	JOURNEYMAN ELECTRICIAN	17
Y057	JOURNEYMAN PAINTER	17

CLASS	TITLE	GRADE
Y059	JOURNEYMAN PLASTERER	17
Y061	JOURNEYMAN PLUMBER	17
Y065	JOURNEYMAN LOCKSMITH	17
Y104	TELEPHONE TECHNICIAN	17
Y107	WELDER	17
Y129	ELECTRONIC TECHNICIAN	17
A002	MEMBER ADVOCATE	16
A024	COLLECTION OFFICER	16
A030	CREDIT & COLLECTIONS SUPV	16
A053	INSURANCE SPECIALIST II	16
A126	GRAIN FIELD AUDITOR TRAINEE	16
A134	TAXPAYER SERVICES REP	16
A174	INDIRECT COST RATE ANALYST	16
B011	CHEMIST INTERN	16
B029	SEED ANALYST II	16
B059	CRIME LAB AUTOPSY TECHNICIAN	16
B061	CRIME LAB HISTOLOGY TECHNICIAN	16
B067	MICROBIOLOGIST INTERN	16
B114	G&F TECHNICIAN III	16
C016	EMERG COMMUNICATION SPECIALIST	16
C029	NATIONAL GUARD COMM SUPERVISOR ...	16
C035	ASP TELECOMMUNICATIONS OPERATOR ..	16
D015	COMPUTER TECH II - INST	16
D017	COMPUTER TAPE LIBRARIAN - INST	16
D035	PROGRAMMER TRAINEE	16
D048	DIS SENIOR COMPUTER TECHNICIAN	16
D082	DIS TAPE LIBRARIAN	16
D083	DIS PROGRAM LIBRARIAN	16
D094	COMPUTER TAPE LIBRARIAN	16
D101	DIS TELECOMMUNICATIONS TECH II	16
E048	STAFF DEVELOPMENT SPECIALIST I	16
E079	MULTI-MEDIA TECHNICAL CONTROLLER II	16
E096	DAY CARE TEACHER	16
E116	HLTH EDUCATOR	16
F025	TV CONTINUITY EDITOR	16
F043	ETV VIDEO TECHNICIAN	16
F053	TELEVISION DIRECTOR	16
G015	ATHLETIC FACILITY SUPV	16
G027	BLDG PLANT MAINTENANCE SUPV I	16
G079	COORDINATOR OF HOUSEKEEPING	16
G113	MINERAL EXPLORATION CORE DRILLER ..	16
G167	EXECUTIVE HOUSEKEEPER I	16
G215	MAJOR APPLIANCE REPAIRMAN	16

CLASS	TITLE	GRADE
H035	FOOD PRODUCTION SUPERVISOR	16
J033	STATE FOREST FOREMAN	16
K044	ESD UNIT SUPERVISOR I	16
K093	DFA PAYROLL TECHNICIAN	16
K129	BUDGET TECHNICIAN	16
L026	DENTAL HYGIENIST	16
L067	MOBILE X-RAY TECH SUPV	16
L116	LPN III/LPTN III	16
L126	PSYCHOLOGICAL INTERN	16
L128	REGISTERED NURSE I	16
L153	X-RAY TECH SUPV/X-RAY TECH II	16
L160	COR INFIRMARY ADMR	16
M021	FAMILY SUPPORT SPECIALIST II	16
M043	MEN HLTH ASSISTANT II	16
M052	REHAB COUNSELOR I	16
M062	RESIDENT PROGRAM COORDINATOR	16
M091	FINANCIAL AID OFFICER I	16
M110	VOLUNTEER SERVICES COORDINATOR	16
M134	YOUTH SERVICES COUNSELOR I	16
M141	DHS/DDS TEAM SHIFT COORDINATOR	16
M148	YOUTH SERVICES WORKER II	16
M181	INTERPRETER I	16
N302	ALUMNI AFFAIRS SPECIALIST	16
N329	INFORMATION SPECIALIST	16
N359	PHOTOGRAPHER II-INST	16
N363	PUBLICITY & STUDENT RECRUIT SPEC I ..	16
P308	PARK TECHNICIAN III	16
P310	FACILITY MANAGER III	16
Q019	EGG PRODUCTS INSPECTOR	16
Q031	APIARY INSPECTOR	16
Q035	LIQUIFIED PETROLEUM GAS TECHNICIAN	16
Q041	LIVESTOCK INSPECTOR	16
Q063	POULTRY GRADER	16
Q089	SHELL EGG GRADER	16
Q112	PETROLEUM PROD TEST TECHNICIAN	16
R003	ADMISSIONS ANALYST SUPERVISOR	16
R020	ASST BOOKSTORE MANAGER	16
R024	CASE COORDINATOR	16
R071	EXTENSION FIELD REPRESENTATIVE	16
R105	MANAGER OF MAILING SERVICES	16
R132	PLANNING SPECIALIST I	16
R156	REVENUE DEPT SUPERVISOR	16

CLASS	TITLE	GRADE
R383	PERSONNEL REPRESENTATIVE TECHNICIAN	16
R440	BUSINESS CONTROLLER II	16
T003	CC/COR OFFICER I	16
T027	MILITARY FIRE & POLICE OFFICER SUPV	16
T037	PUB SAFETY OFFICER II	16
T048	CRIME LAB FIELD INVESTIGATOR.....	16
T070	HE PUBLIC SAFETY OFFICER I	16
V028	CRIME LAB EVIDENCE TECHNICIAN	16
V033	PLANT WAREHOUSE ASSISTANT FOREMAN	16
V053	SURPLUS PROPERTY AGENT	16
V056	WAREHOUSE MANAGER	16
V070	FED SURPLUS PROP UTILIZATION INSP ...	16
V076	COR PROPERTY OFFICER	16
W001	ASP AFIS TECHNICIAN	16
X318	CC/COR ADMIN REVIEW OFFICER	16
X329	DRIVERS LICENSE HEARING OFFICER I ...	16
X333	ENGINEER TECHNICIAN	16
X349	TAX INVESTIGATOR	16
X368	OCCUPATIONAL HYGIENIST I	16
X391	BAIL BONDSMAN INVESTIGATOR	16
X395	SURVEY CREW CHIEF	16
X411	WEIGHTS & MEASURES INVEST II	16
Y085	PRINTER II	16
A009	ACCOUNTS SUPERVISOR	15
A028	REVENUE AGENT II	15
A031	DELINQUENT TAX COLLECTOR	15
A063	PAYROLL OFFICER	15
A092	REPORTING SPECIALIST III	15
A108	ACCOUNTING TECHNICIAN II	15
A109	TAX EXAMINER II	15
A155	ICF COORDINATOR	15
A178	INSURANCE REPRESENTATIVE	15
A206	PATIENT ACCOUNTS SPECIALIST	15
B045	LABORATORY COORDINATOR	15
B077	PATHOLOGY CURATOR	15
B117	ARCHEOLOGICAL LAB ASST III	15
D005	COMPUTER OPERATOR II	15
D040	COMPUTER LAB TECH II - INST	15
E003	ATHLETIC TRAINER	15
E084	HABILITATION/REHAB INSTRUCTOR I	15
F004	ETV PRODUCTION TECHNICIAN I	15
F013	SPECIAL EVENTS SUPERVISOR	15

CLASS	TITLE	GRADE
F051	TV PRODUCTION ASSISTANT	15
G003	VEHICLE FACILITIES COORD	15
G043	EQUIPMENT MECHANIC	15
G055	FARM MAINTENANCE MECHANIC	15
G087	LANDSCAPE SUPERVISOR I	15
G183	ARCHEOLOGICAL FIELD ASST III	15
G213	INST MAINT WORK PLNR & SCHEDULER ..	15
J011	FOREST RANGER II	15
J015	FOREST TECHNICIAN	15
K003	CAMPUS POSTMASTER	15
K011	ADMINISTRATIVE OFFICE SUPERVISOR ...	15
K017	PUBLIC DEFENDER SECRETARY II	15
K027	SUBPOENA COORDINATOR	15
K028	CLAIMS DATA SPECIALIST II	15
K034	INSURANCE LICENSING SPECIALIST	15
K045	REHAB TECHNICIAN	15
K105	REPROD EQUIPMENT OPERATOR SUPV ...	15
K140	DFA MESSENGER SERVICE COORDINATOR	15
L035	PHARMACY TECHNICIAN SUPERVISOR	15
L061	LIFE SKILLS TRAINER SUPERVISOR	15
L115	LPN II/LPTN II	15
L179	PHYSICAL THERAPY ASSISTANT	15
L183	OCCUPATIONAL THERAPY ASSISTANT	15
M002	ADMISSIONS INTERVIEWER SUPV	15
M020	FAMILY SUPPORT SPECIALIST I	15
M034	HOUSEPARENT II	15
M048	RECREATIONAL ACTIVITY LEADER II	15
M073	SOCIAL SERVICE REPRESENTATIVE I	15
M079	SOCIAL SERVICE WORKER I	15
M104	VOCATIONAL REHAB EVALUATOR I	15
M149	YOUTH SERVICES WORKER I	15
N311	COMMERCIAL ARTIST I/GRAPHIC ART I	15
N316	MUSEUM PROGRAM ASSISTANT	15
N331	LIVESTOCK NEWS REPORTER	15
Q049	MOISTURE METER INSPECTOR	15
Q051	PEST CONTROL INSPECTOR I	15
Q053	PEST CONTROL TECH	15
R009	ADMINISTRATIVE ASSISTANT I	15
R042	AREC EXAMINER	15
R076	OIT ADMINISTRATIVE ASSISTANT I	15
R148	RESEARCH ASSISTANT	15
R177	LEGAL ASSISTANT	15
R259	ESD INTERVIEWER I	15

CLASS	TITLE	GRADE
R342	INTERVIEWER	15
R444	BUSINESS CONTROLLER I	15
T025	MILITARY FIRE & POLICE OFFICER	15
T047	SECURITY OFFICER III	15
T073	DCC INTAKE OFFICER	15
V011	CENTRAL SUPPLY SUPV	15
V021	COMMODITY DIST REP	15
V039	PURCHASE AGENT I/ASST PURCHASE AGENT	15
V051	STOREROOM SUPV/STORE SUPV	15
W015	MEDICAL RECORDS TECHNICIAN	15
W025	RECORDS CONSULTANT	15
X307	COMPLAINTS INVESTIGATOR	15
X350	HLTH CARE ANALYST I	15
X382	ASP DRIVERS LICENSE EXAMINER	15
X385	PROPERTY ASSESSMENT AUDITOR I	15
Y047	INSTRUMENTATION TECHNICIAN I	15
Y135	SOLAR SYSTEM OPERATOR	15
A016	COLLECTOR	14
A027	REVENUE AGENT I	14
A050	PSC TAX DIV VALUATION ANALYST I	14
A208	PATIENT ACCOUNTS CLERK II	14
B002	PHLEBOTOMIST II	14
B031	SEED ANALYST I	14
B113	G&F TECHNICIAN II	14
C015	TELECOMMUNICATIONS OPERATOR	14
D014	COMPUTER TECH I - INST	14
D089	DIS TELECOMMUNICATIONS TECH I	14
E081	AUDIOVISUAL TECHNICIAN	14
F007	RADIO ANNOUNCER	14
G014	CHDC LAUNDRY OPERATIONS MANAGER .	14
G017	RESEARCH FIELD TECHNICIAN	14
G065	GREENHOUSE TECHNICIAN	14
G187	INSTITUTIONAL BUS DRIVER	14
H002	MANAGER OF CATERING	14
H023	COMMISSARY MANAGER	14
J009	FOREST RANGER I	14
J031	NURSERY/SEED ORCHARD TECHNICIAN .	14
K001	COMPUTER PUBLISHING OPERATOR	14
K005	ADMISSIONS ANALYST II	14
K008	PRKS & TRSM ADMIN SUPPORT COORD ...	14
K014	LIBRARY ACADEMIC TECH III	14
K016	TRANSPORTATION SERVICES REP	14
K018	CHILD SUPPORT TECHNICIAN	14

CLASS	TITLE	GRADE
K019	PUBLIC DEFENDER SECRETARY I	14
K021	REHABILITATION ASSISTANT II	14
K029	CLAIMS DATA SPECIALIST I	14
K030	ACIC TECHNICIAN	14
K032	INSURANCE LICENSE TECHNICIAN	14
K036	CLAIMS EXAMINER	14
K041	EXECUTIVE SECY/ADMINISTRATIVE SECY	14
K042	ASP ADMINISTRATIVE SPECIALIST	14
K061	LIBRARY TECHNICAL ASST III	14
K079	MICRO-PHOTOGRAPHER SUPERVISOR	14
K091	PERSONNEL ASSISTANT I-INST	14
K117	MEDICAL OR LEGAL SECRETARY	14
K174	BRAILLE & RECORDING SPECIALIST	14
L113	LPN I/LPTN I	14
L151	X-RAY TECH/X-RAY TECH I	14
L184	DIETETIC TECHNICIAN	14
M036	FOSTER GRANDPARENT SUPERVISOR	14
M061	RESIDENT HALL MANAGER II	14
N286	TRAVEL INFORMATION WRITER I	14
N303	ARCHITECTURAL DRAFTSMAN	14
N327	INFORMATION OFFICER I	14
N335	MEDICAL PHOTOGRAPHER I	14
N338	LATENT PRINTS TECHNICIAN	14
N377	AUDIOVISUAL COORD/PHOTOGRAPHER ...	14
P309	FACILITY MANAGER II	14
P367	PARK TECH II	14
R041	BOOKSTORE OFFICE MANAGER	14
T032	HE PUBLIC SAFETY SECURITY OFFCR II ..	14
T035	PUB SAFETY OFFICER I	14
V004	BUYER I	14
V019	COMMODITY ANALYST	14
W005	FINGERPRINT TECH	14
W017	NOSOLOGIST	14
X332	DRIVERS LICENSE EXAMINER	14
X336	ESD CLAIMS ADJUDICATOR	14
X409	WEIGHTS & MEASURES INVEST I	14
Y105	UPHOLSTERER	14
A012	ESD ACCOUNTING CLERK	13
A039	FINANCIAL COUNSELOR	13
A051	INSURANCE SPECIALIST I	13
A081	REFUND SPECIALIST	13
A091	REPORTING SPECIALIST II	13
A120	G&F LICENSING CLERK	13

CLASS	TITLE	GRADE
B043	LABORATORY ASSISTANT III	13
B049	LABORATORY TECHNICIAN II	13
B069	MINERAL TECHNICIAN	13
B087	RESEARCH TECHNICIAN II	13
B119	ARCHEOLOGICAL LAB ASST II	13
D003	COMPUTER OPERATOR I	13
D030	COMPUTER LAB TECH I - INST	13
D107	DIS VOICE INFO OPERATOR SUPV	13
D114	DP PRODUCTION SCHEDULER	13
E017	INSTITUTION ASSISTANT LIBRARIAN	13
E025	CHILDCARE TEACHER/SUPERVISOR	13
E027	INSTITUTIONAL TEACHER ASSISTANT	13
E033	MULTI-MEDIA TECHNICAL CONTROLLER I	13
G021	BOILER OPERATOR	13
G115	NURSERY ASST & GROUNDSKEEPER SUPV	13
G129	SURGICAL TECHNICIAN	13
G139	WATER FILTER/WASTE DISPOS PLNT OPER	13
G181	ARCHEOLOGICAL FIELD ASST II	13
H021	COMMISSARY SUPERVISOR	13
H049	SUPERVISOR OF COOKING	13
H061	EXPERIMENTAL MEAT CUTTER	13
K002	CASHIER III	13
K024	COUNTY HEALTH RECORDS CLERK II	13
K026	DATA ENTRY OPERATOR SUPERVISOR	13
K147	HEAD CASHIER	13
K153	SECRETARY II	13
K165	MEDICAL TRANSCRIPTIONIST	13
K172	VETERANS AID ASST	13
L031	EEG/EKG TECHNICIAN	13
L054	EMERGENCY ROOM TECHNICIAN	13
L059	LIFE SKILLS TRAINER II	13
L065	MOBILE X-RAY TECH	13
L091	OCCUPATIONAL THERAPY WORKER	13
L093	ORTHOTIST AIDE	13
L107	PHYSICAL THERAPY WORKER	13
M037	HOUSEPARENT I	13
M047	RECREATIONAL ACTIVITY LEADER I	13
M067	SOCIAL SERVICE AIDE II	13
M174	SOCIAL SERVICE REPRESENTATIVE TRN ..	13
N307	CARTOGRAPHER II	13
N351	PHOTO LAB TECHNICIAN	13

CLASS	TITLE	GRADE
N357	PHOTOGRAPHER I-INST	13
P341	STUDENT UNION SECTION MANAGER	13
R073	EXTENSION SPECIALIST ASSISTANT	13
R125	PERSONNEL OFFICER	13
R173	WORK STUDY COORD	13
X319	COSMETOLOGY INSPECTOR	13
Y083	PRINTER I	13
A106	ACCOUNTING TECHNICIAN I	12
A107	TAX EXAMINER I	12
A184	ASST REVENUE AGENT	12
A210	PATIENT ACCOUNTS CLERK I	12
B004	PHLEBOTOMIST I	12
B083	DEQ TECHNICIAN	12
B112	G&F TECHNICIAN I	12
C007	RADIO DISPATCH OPR/DISPATCH OPR	12
C013	SWITCHBOARD OPERATOR SUPERVISOR ..	12
D013	COMPUTER TECH TRAINEE - INST	12
D104	DIS VOICE INFO OPERATOR	12
E006	CARE GIVER III	12
E030	PROGRAM ASSISTANT - CES	12
F029	TV FILM VIDEOTAPE SPECIALIST	12
G011	ATHLETIC EQUIPMENT SUPV	12
G092	LAUNDRY OPERATIONS MANAGER	12
G149	CENTRAL CONTROL SYSTEM OPERATOR ..	12
G207	PARKING CONTROL SUPV	12
J005	FOREST DISPATCHER	12
K007	REPRODUCTION TECHNICIAN SPECIALIST	12
K009	ADMISSIONS ANALYST I	12
K012	LIBRARY ACADEMIC TECH II	12
K039	DOCUMENT EXAMINER II	12
K089	PERSONNEL ASSISTANT	12
K099	REGISTRARS ASSISTANT	12
K115	STATISTICIAN ASST II/STATISTICIAN I	12
K124	WARD COORDINATOR	12
K127	COURIER SUPERVISOR	12
K135	AHRMS DATA TECHNICIAN	12
K145	CASHIER/CASHIER II	12
K181	MAILROOM SUPERVISOR	12
L013	CHEST X-RAY SPEC	12
L020	CERTIFIED NURSING ASSISTANT II	12
M041	MEN HLTH ASSISTANT I	12
M059	RESIDENT HALL MANAGER I	12
P307	FACILITY MANAGER I	12

CLASS	TITLE	GRADE
P345	TRAVEL CONSULTANT II	12
P365	PARK TECH I	12
Q023	FIRE EQUIPMENT SERVICE INSPECTOR ...	12
T013	FIRE & SAFETY COORD	12
T045	SECURITY OFFICER II	12
T057	HE PUBLIC SAFETY SECURITY OFFCR I ...	12
T067	HE PUBLIC SAFETY DISPATCHER	12
V017	CENTRAL SUPPLY TECH SHIFT SUPV	12
W011	LAND RECORDS CUSTODIAN	12
X330	ESD CLAIMS ADJUDICATOR TRAINEE	12
A089	REPORTING SPECIALIST I	11
B005	ASST LABORATORY ANIMAL TECH	11
B033	HISTOLOGY TECHNICIAN	11
B041	LABORATORY ASSISTANT II	11
B047	LABORATORY TECHNICIAN I	11
B085	RESEARCH TECHNICIAN I	11
B121	ARCHEOLOGICAL LAB ASST I	11
D007	COMPUTER OPERATOR TRAINEE	11
E005	AUDIOVISUAL LABORATORY ASSISTANT . .	11
F015	SPECIAL EVENTS WORKER	11
G001	AGRI LABORATORY TECHNICIAN	11
G061	FURNITURE REPAIRMAN	11
G073	HEAVY EQUIP OPERATOR	11
G111	MAINT WORK PLANNER & SCHEDULER ...	11
G151	CUSTODIAL SERVICE SHIFT SUPV	11
G179	ARCHEOLOGICAL FIELD ASST I	11
H047	MEAT CUTTER II/BUTCHER II	11
K020	REHABILITATION ASSISTANT I	11
K025	COUNTY HEALTH RECORDS CLERK I	11
K059	LIBRARY TECHNICAL ASST II	11
K078	ARCHIVAL MICRO-PHOTOGRAPHER	11
K155	SECRETARY I	11
L018	CERTIFIED NURSING ASSISTANT I	11
L025	DENTAL ASSISTANT	11
L057	LIFE SKILLS TRAINER I	11
L081	NURSING ASST II	11
L101	PHARMACY TECH	11
L181	MEN HLTH AIDE	11
M001	ADMISSIONS INTERVIEWER	11
M065	SOCIAL SERVICE AIDE I	11
N305	CARTOGRAPHER I/DRAFTSMAN	11
N308	MUSEUM GUIDE II	11
T043	SECURITY OFFICER I	11
V026	EVIDENCE CLERK	11

CLASS	TITLE	GRADE
V041	PURCHASING ASSISTANT	11
V043	SHIPPING & RECEIVING CLERK	11
X397	SURVEY CREWMAN	11
Y001	APPRENTICE TRADESMAN	11
Y133	COLLECTION FIELD MAINTENANCE SPEC	11
D103	DIS DATA ENTRY OPERATOR-LEAD	10
G006	MOTOR VEHICLE OPERATOR	10
G013	WAREHOUSE WORKER	10
G057	AGRI FARM TECHNICIAN	10
G127	STADIUM MAINTENANCE SUPV	10
G147	ASST CORE DRILLER	10
G165	WORK MAINTENANCE LEADER	10
G185	TRANSIT BUS DRIVER	10
H005	BAKER II	10
H027	COOK II	10
K006	DATA ENTRY SPECIALIST	10
K010	LIBRARY ACADEMIC TECH I	10
K023	CLERICAL ASSISTANT	10
K037	DOCUMENT EXAMINER I	10
K097	RECEPTIONIST	10
K103	REPROD EQUIPMENT OPERATOR	10
K113	STATISTICIAN ASST I	10
L021	HLTH PUB HLTH TECHNICIAN II	10
L097	PHARMACY ASST	10
L099	PHARMACY ASST-INST	10
P343	TRAVEL CONSULTANT I	10
V029	INVENTORY CONTROL CLERK	10
W023	RECORDS CENTER OPERATOR II	10
A129	BOOKKEEPER ASSISTANT	09
B001	ACADEMIC LABORATORY ASSISTANT	09
B039	LABORATORY ASSISTANT I	09
C011	SWITCHBOARD OPERATOR II	09
C025	TELECOMMUNICATIONS OPERATOR TRNEE	09
E016	CHILDCARE ASSISTANT	09
E095	DAY CARE ATTENDANT	09
G005	PARKING CONTROL OFFICER	09
G137	VENDING SERVICEMAN	09
H045	MEAT CUTTER I/BUTCHER I	09
K004	PRKS & TRSM DESK CLERK	09
K038	BED AND BREAKFAST DESK CLERK	09
K065	MAIL OFFICER	09
K077	MICRO-PHOTOGRAPHER II	09
K149	SALES CASHIER/CASHIER I	09

CLASS	TITLE	GRADE
K180	CASH CONTROL OPERATOR	09
L089	OCCUPATIONAL THERAPY AIDE	09
L105	PHYSICAL THERAPY AIDE	09
N306	MUSEUM GUIDE I	09
N321	DARKROOM TECHNICIAN	09
P363	PARK AIDE II	09
V015	CENTRAL SUPPLY TECHNICIAN	09
V055	SURPLUS PROPERTY ASSISTANT	09
Y045	INSTITUTIONAL BEAUTICIAN	09
E004	CARE GIVER II	08
G002	CLINICAL HOUSEKEEPER	08
G010	LAUNDRY SUPERVISOR	08
G039	CUSTODIAL SUPV II	08
G045	EQUIPMENT OPERATOR	08
G059	FARM WORKER	08
G099	LINEN SUPERVISOR	08
G109	BLDG/EQUIP MAINT REPAIRMAN II	08
H003	BAKER I	08
H019	CANTEEN SUPERVISOR	08
H025	COOK I	08
H053	FOOD SERVICE WORKER III	08
K057	LIBRARY TECHNICAL ASST I	08
K182	MAIL PROCESSOR	08
L022	CERTIFIED NURSING ASST TRAINEE	08
L055	MEN HLTH WORKER	08
L063	LIFE SKILLS TRAINER TRAINEE	08
L079	NURSING AIDE/NURSING ASST I	08
L155	HLTH PUB HLTH TECHNICIAN I	08
Y101	SKILLED TRADES HELPER	08
B051	LABORATORY TECHNICIAN TRAINEE	07
C009	SWITCHBOARD OPERATOR I	07
F005	FILM TECHNICIAN	07
G177	MAINTENANCE WORKER SUPERVISOR	07
G191	CLOTHING SHOP OPERATOR	07
K015	OFFICE CLERK	07
K071	MESSANGER SUPERVISOR	07
K075	MICRO-PHOTOGRAPHER I	07
P361	PARK AIDE I	07
Q065	PRODUCE INSPECTOR	07
W021	RECORDS CENTER OPERATOR I	07
G077	HOUSEKEEPER SUPERVISOR	06
G107	BLDG/EQUIP MAINT REPAIRMAN I	06
G169	CUSTODIAL SUPV I	06
M017	ESCORT SERVICES COORDINATOR	06

CLASS	TITLE	GRADE
B037	LABORATORY AIDE II	05
G175	MAINTENANCE WORKER II	05
H017	CANTEEN OPERATOR II/SNACKBAR OPER	05
H043	FOOD SERVICE WORKER II	05
K069	COURIER II	05
N385	PUBLIC RELATIONS VISITOR COORD	05
V049	STOCK CLERK II	05
Y095	SEAMSTRESS II	05
E001	CARE GIVER I	04
G008	LAUNDRY WORKER	04
G035	CUSTODIAL WRKR II	04
G075	HOUSEKEEPER	04
G173	MAINTENANCE WORKER I	04
B035	LABORATORY AIDE/LABORATORY AIDE I ..	03
E087	VOCATIONAL TRAINEE	03
G041	ELEVATOR OPERATOR	03
G171	CUSTODIAL WRKR I	03
H015	CANTEEN OPERATOR I	03
H039	FOOD SERVICE WORKER I	03
H051	WAITRESS/WAITER	03
K067	COURIER I/MESSENGER	03
M031	ESCORT	03
T061	WATCHMAN	03
V047	STOCK CLERK I	03
Y093	SEAMSTRESS I	03

History. Acts 1993, No. 708, § 1; 1995, No. 966, § 1; 1997, No. 530, § 1; 1997, No. 1174, § 1; 1999, No. 1019, § 2; 2001, No. 1462, § 1; 2003, No. 923, § 1; 2003, No. 1473, § 73.

A.C.R.C. Notes. Acts 1995, No. 1198, § 94, provided: “COUNTY OPERATIONS — TRI-LEVEL CAREER ADVANCEMENT. Due to the expansion of case-worker responsibilities and the need to recruit and retain qualified workers, the Division of County Operations of the Department of Human Services is authorized to create and implement a Tri-Level worker classification system as described below:

CODE	TITLE	GRADE
M020	Family Support Specialist I	15
M021	Family Support Specialist II	16
M023	Family Support Specialist III	17

“Effective July 1, 1995, all persons occupying the positions of SS Representa-

tive I, Class Code M073 and SS Worker I, Class Code M079, will be placed in the position of Family Support Specialist I, Class Code M020, Grade 15. Beginning July 1, 1996, upon completion of required training, productivity goals and other criteria approved by the Office of Personnel Management (OPM) of the Department of Finance and Administration, any incumbent so qualified will be eligible for advancement via promotion to the Grade 16 classification of Family Support Specialist II within the position occupied. The Office of Personnel Management may approve the authorization of any of these positions to the next higher level classification as long as the Division of County Operations of the Department of Human Services is limited to a maximum of eight hundred six (806) filled positions in utilizing the title Family Support Specialist II, Class Code M021, grade 16.”

Acts 1997, No. 1174, § 1, changed the

grade assigned to § 21-5-208(b), (255), (289), (585), (768), (929), (1129), (1325), (1493), (1626), and (1627).

Acts 1997, No. 1174, § 2, provided: "The new pay grades assigned to the position titles by Section 1 of this Act shall be contingent upon a determination by the Director of the Department of Arkansas State Police and the Chief Fiscal Officer of the State that sufficient funds are available to fund any one or all of the new grades assigned. The classification of CO15 Telecommunications Operator shall be given priority for upgrade should the funds become available. Further, the Director of the Department of Arkansas State Police shall have sole discretion in determining which if any of the availability of sufficient funding. In no event shall funds be used to implement any of the upgrades authorized in Section 1 of this Act that would have otherwise allowed the Department of Arkansas State Police to

hire additional state police officers authorized by the General Assembly."

Publisher's Notes. Former § 21-5-208, concerning classification of positions, was repealed by Acts 1993, No. 708, § 1. The former section was derived from Acts 1969, No. 199, § 4; 1971, No. 750, §§ 2, 3; 1973, No. 873, §§ 3, 4; 1975, No. 932, § 1; 1977, No. 909, § 1; 1979, No. 828, § 2; 1981, No. 650, § 2; 1983, No. 931, §§ 1, 2; 1985, No. 981, § 2; A.S.A. 1947, § 12-3204; Acts 1989, No. 793, § 7; 1991, No. 1148, § 3.

Amendments. The 1999 amendment rewrote this section.

The 2001 amendment redesignated former (a) as present (a)(1) and (a)(2) and added an additional one hundred and two classification titles.

The 2003 amendment by No. 923, as amended by No. 1473, rewrote this section.

21-5-209. Compensation plan.

(a) There is established for state agencies and institutions covered by the provisions of this subchapter a compensation plan for the setting of salaries and salary increases, where deserved, of all employees serving in positions covered by this subchapter.

(b) No employee shall be paid at a rate of pay higher than the appropriate rate in the grade assigned to his or her class, and no employee shall be paid more than the maximum for his or her grade, provided that employees presently employed in a position who are being paid at a rate in excess of the maximum for their assigned grade may continue to receive their rate of pay.

(c) It is the specific intent of the General Assembly to authorize, in the enactment of this compensation plan, maximum rates of pay for each of the appropriate grades assigned to a class, but it is not the intent that any pay increases shall be automatic or that any employee shall have a claim or a right thereto unless the department head of the agency or the institution shall determine that the employee, by experience, ability, and work performance, has earned the increase in pay authorized for the appropriate rate.

(d)(1) The following grades and pay levels shall be the authorized compensation plan, effective July 1, 2003, for the state service for all positions of agencies and institutions covered by this subchapter to which a classification title and salary grade have been assigned, in accordance with this subchapter and the appropriation act of the agency or institution:

PAY LEVEL	I	II	III	IV
GRADE 1	\$11,916	\$11,916	\$11,916	\$12,397
GRADE 2	\$11,916	\$14,334	\$17,058	\$22,686
GRADE 3	\$12,298	\$14,626	\$17,381	\$23,149
GRADE 4	\$12,298	\$14,916	\$17,738	\$23,649
GRADE 5	\$12,298	\$15,208	\$18,096	\$24,047
GRADE 6	\$12,484	\$15,501	\$18,451	\$24,580
GRADE 7	\$12,745	\$15,824	\$18,841	\$25,043
GRADE 8	\$13,004	\$16,148	\$19,198	\$25,575
GRADE 9	\$13,490	\$16,732	\$19,909	\$26,471
GRADE 10	\$14,365	\$17,834	\$21,208	\$28,198
GRADE 11	\$15,306	\$18,970	\$22,570	\$30,058
GRADE 12	\$16,279	\$20,202	\$24,060	\$32,019
GRADE 13	\$17,349	\$21,531	\$25,618	\$34,110
GRADE 14	\$18,485	\$22,926	\$27,272	\$36,336
GRADE 15	\$19,684	\$24,418	\$29,055	\$38,662
GRADE 16	\$20,981	\$26,006	\$30,935	\$41,220
GRADE 17	\$22,148	\$27,694	\$32,947	\$43,876
GRADE 18	\$23,768	\$29,477	\$35,086	\$46,732
GRADE 19	\$25,358	\$31,422	\$37,388	\$49,788
GRADE 20	\$26,979	\$33,466	\$39,822	\$53,077
GRADE 21	\$28,763	\$35,638	\$42,383	\$56,564
GRADE 22	\$30,613	\$37,941	\$45,139	\$60,118
GRADE 23	\$32,591	\$40,405	\$48,089	\$64,037
GRADE 24	\$34,730	\$43,030	\$51,203	\$68,189
GRADE 25	\$36,967	\$45,820	\$54,542	\$72,607
GRADE 26	\$39,366	\$48,803	\$58,078	\$77,356

(2) The following grades and pay levels shall be the authorized compensation plan, effective July 1, 2004, and thereafter, for the state service for all positions of agencies and institutions covered by this subchapter to which a classification title and salary grade have been assigned, in accordance with this subchapter and the appropriation act of the agency or institution:

PAY LEVEL	I	II	III	IV
GRADE 1	\$12,238	\$12,238	\$12,238	\$12,397
GRADE 2	\$12,238	\$14,334	\$17,058	\$22,686
GRADE 3	\$12,630	\$14,626	\$17,381	\$23,149
GRADE 4	\$12,630	\$14,916	\$17,738	\$23,649
GRADE 5	\$12,630	\$15,208	\$18,096	\$24,047
GRADE 6	\$12,821	\$15,501	\$18,451	\$24,580
GRADE 7	\$13,089	\$15,824	\$18,841	\$25,043
GRADE 8	\$13,355	\$16,148	\$19,198	\$25,575
GRADE 9	\$13,854	\$16,732	\$19,909	\$26,471

PAY LEVEL	I	II	III	IV
GRADE 10	\$14,753	\$17,834	\$21,208	\$28,198
GRADE 11	\$15,719	\$18,970	\$22,570	\$30,058
GRADE 12	\$16,718	\$20,202	\$24,060	\$32,019
GRADE 13	\$17,818	\$21,531	\$25,618	\$34,110
GRADE 14	\$18,984	\$22,926	\$27,272	\$36,336
GRADE 15	\$20,215	\$24,418	\$29,055	\$38,662
GRADE 16	\$21,547	\$26,006	\$30,935	\$41,220
GRADE 17	\$22,746	\$27,694	\$32,947	\$43,876
GRADE 18	\$24,410	\$29,477	\$35,086	\$46,732
GRADE 19	\$26,043	\$31,422	\$37,388	\$49,788
GRADE 20	\$27,707	\$33,466	\$39,822	\$53,077
GRADE 21	\$29,540	\$35,638	\$42,383	\$56,564
GRADE 22	\$31,439	\$37,941	\$45,139	\$60,118
GRADE 23	\$33,471	\$40,405	\$48,089	\$64,037
GRADE 24	\$35,668	\$43,030	\$51,203	\$68,189
GRADE 25	\$37,965	\$45,820	\$54,542	\$72,607
GRADE 26	\$40,429	\$48,803	\$58,078	\$77,356

(e) It is the intent of the General Assembly that the compensation plan provided for in this section shall be implemented and function in compliance with other provisions in this subchapter, the Regular Salary Procedures and Restrictions Act, § 21-5-101, and other fiscal control laws of this state, where applicable.

History. Acts 1969, No. 199, § 5; 1971, No. 749, § 1; 1973, No. 286, §§ 1, 2; 1974 (Ex. Sess.), No. 39, § 1; 1975, No. 932, § 2; 1977, No. 289, § 1; 1979, No. 3, § 1; 1981, No. 19, § 1; 1983, No. 68, § 1; 1985, No. 101, § 1; A.S.A. 1947, §§ 12-3205, 12-3205n; Acts 1989, No. 793, § 8; 1991, No. 452, § 1; 1991, No. 1148, §§ 4, 14; 1993, No. 770, § 1; 1995, No. 992, § 1; 1997, No. 532, § 1; 1999, No. 813, § 1; 2001, No. 1461, § 3; 2003 (1st Ex. Sess.), No. 22, § 1.

A.C.R.C. Notes. Acts 1988 (3rd Ex. Sess.), No. 24, § 1, provides: "The salary rates established by Act 101 of 1985 for each grade shall include a step rate that is equal to an additional two and one half percent (2.5%) above those rates established by said act, with the exception of step 10. In any laws or parts of laws establishing or limiting the maximum annual salary rates of classified state employees, the term 'step' shall be interpreted as including the additional two-and-one-half percent (2.5%) step rates above those rates established by Act 101 of 1985, as authorized by this act."

Publisher's Notes. Acts 1985, No. 100, § 2, provided that persons compensated under the provisions of this section prior to July 1, 1983, and who were promoted between July 1, 1983, and February 24, 1985, should be immediately eligible to be compensated at the level at which the persons would have been eligible if Acts 1983, No. 68, § 1, had not provided that persons compensated under this section prior to July 1, 1983, were not eligible for a step increase unless they completed one additional year of service above that required by law. The act also provided that the eligibility authorized by Acts 1985, No. 100, should not affect the person's eligibility for a step increase as authorized by subsections (a)-(c) of this section.

Acts 1985, No. 819, § 1, provided that the Director of the Department of Education — General Division, and the Director of the Department of Education — Vocational and Technical Division are authorized to pay persons employed prior to July 1, 1983, in Grades 21 through 26 and in vocational instructor classifications, in accordance with the salary schedule pre-

scribed in this section and may grant the persons a one-step increase and not more than a two-step increase in salary in addition to that to which the persons are otherwise entitled.

Amendments. The 1999 amendment rewrote (e).

The 2001 amendment made gender neutral changes in (b); deleted (d); red-

esignated former (e)(1) and (f) as present (d) and (e); substituted "2001" for "1999" in (d)(1); substituted "2002" for "2000" in (d)(2); and increased the monetary amounts in Levels I-IV of Grades 1-26.

The 2003 (1st Ex. Sess.) amendment substituted "2003" for "2001" in (d)(1); and substituted "2004" for "2002" in (d)(2).

CASE NOTES

Salary Increases.

There is nothing in this section or § 21-5-211 that would give rise to a protected property interest in promotions or pay raises; this section merely establishes a compensation plan for state agencies and institutions for the setting of salaries and salary increases where such increases are "deserved," and specifically provides that the intent of the section is that no pay increases shall be automatic or that any employee shall have a claim or right thereto unless the department head of the

agency or the institution shall determine that the employee, by experience, ability, and work performance, has earned the increase in pay authorized for the appropriate rate. *Jones v. Clinton*, 974 F. Supp. 712 (E.D. Ark. 1997).

It is of no import that this section and § 21-5-211 may establish a range within which an employee's salary must fall as such a requirement does not give rise to a protected property interest in a salary increase. *Jones v. Clinton*, 974 F. Supp. 712 (E.D. Ark. 1997).

21-5-210. Implementation of plan — Changes in class specifications.

(a) For the purposes of implementing the uniform employee classification and compensation plan for the respective agencies or institutions of higher education covered by the provisions of this subchapter, the General Assembly determines that the class specifications prepared by the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration in classifying the various positions authorized in the respective appropriation acts shall be the class specifications to be followed in implementing the respective appropriations for all part-time and full-time employees of the respective agencies and institutions covered by the provisions of this subchapter.

(b) Changes in class specifications may be made in whole or in part by regulation of the office with the review of the Legislative Council.

History. Acts 1969, No. 199, § 3; 1971, No. 750, § 1; 1973, No. 873, § 2; 1979, No. 828, § 1; 1981, No. 650, § 1; A.S.A. 1947, § 12-3203; Acts 1989, No. 793, § 9; 2001, No. 1461, § 4.

Amendments. The 2001 amendment inserted "of the Division of Management

Services of the Department of Finance and Administration" following "Personnel management" in (a); and deleted "so long as the changes do not substantially change or alter the original class specifications adopted in this subchapter" following "Legislative Council" in (b).

21-5-211. Implementation procedure for grade changes — Salary adjustments.

(a) The Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration shall have administrative responsibility for enforcing compliance by state agencies and institutions affected by this subchapter in implementing classification grade changes.

(b) Subject to funds and appropriations being provided, the following implementation procedures shall apply to state agencies and institutions covered by the provisions of this subchapter, commencing on July 1 of each fiscal year:

(1) The maximum annual salary rate for which an employee covered by the provisions of this subchapter shall be eligible for each year of the biennium shall be determined as follows:

(A)(i) For employees whose annual salary rate on June 30 is:

(a) Twenty-one thousand one hundred twenty-eight dollars (\$21,128) or less, the employee is eligible for an annual increase of five hundred seventy dollars (\$570);

(b) Twenty-one thousand one hundred twenty-eight dollars (\$21,128) to fifty thousand dollars (\$50,000), the employee is eligible for an annual salary increase of five hundred seventy dollars (\$570) plus two and seven-tenths percent (2.7%) of the amount that the employee's June 30 salary exceeds twenty-one thousand one hundred twenty-eight dollars (\$21,128);

(c) Fifty thousand and one dollars (\$50,001) to ninety thousand dollars (\$90,000), the employee is eligible for an annual increase of one thousand three hundred fifty dollars (\$1,350) plus one and nine tenths percent (1.9%) of the amount that the employee's June 30 salary exceeds fifty thousand dollars (\$50,000); and

(d) Ninety thousand and one dollars (\$90,001) and above, the employee is eligible for an annual increase of two thousand one hundred ten dollars (\$2,110) plus one and four tenths percent (1.4%) of the amount that the employee's June 30 salary exceeds ninety thousand dollars (\$90,000).

(ii) Employees whose salaries fall below Pay Level I for the grade assigned to their classification may be adjusted to the entry level.

(iii) All other employees' salaries shall be adjusted to the appropriate pay level for the grade assigned to their classification but may not exceed the maximum rate provided for that grade unless otherwise provided for by this section.

(iv) Employees whose June 30 annual salary rate is at Pay Level IV shall be eligible for the increase provided in subdivisions (b)(1)(A)(i)(a) — (b)(1)(A)(i)(d) of this section, but the increase shall be paid as a lump sum on June 30 of the year in which the increase is to occur;

(B) Salary adjustments provided for in this section shall be made for all employees covered by the provisions of this subchapter prior to all other salary adjustments;

(C) When an employee is demoted for cause or voluntarily solicits a demotion, his or her rate of pay shall be fixed in the lower-graded position at a rate equal to six percent (6%) less than the employee's rate of pay at the time of demotion for demotions of one (1) grade and a maximum of eight percent (8%) less than the employee's rate of pay at the time of demotion for demotions of two (2) or more grades;

(D)(i) Employees covered by the provisions of this subchapter shall be eligible for an additional two percent (2%) salary increase each year of the biennium, provided that:

(a) The Chief Fiscal Officer of the State determines that sufficient general revenues become available; and

(b) The additional two percent (2%) salary increase shall not allow an employee's compensation to exceed the amount set out for Pay Level IV for the position.

(ii) Employees compensated at Pay Level IV shall be eligible to receive the two percent (2%) salary increase authorized in this section during the biennium as lump sum payments, and the payments shall not be construed as exceeding the maximum salary;

(E)(i) An employee who due to legislative enactment is to be compensated at a higher grade, i.e., an upgrade, than that which was in effect on June 30 of the previous fiscal year shall be eligible for an additional six percent (6%) increase in his or her maximum annual salary in the new grade.

(ii) An employee who due to legislative enactment is to be compensated at a lower grade, i.e., a downgrade, than that which was in effect on June 30 of the previous year shall not have his or her maximum salary rate reduced due to the grade reduction, and the employee's salary shall remain constant until that employee's assigned grade maximum is equal to or exceeds the employee's established salary; and

(F)(i) Any employee whose specific job assignment requires the skill to communicate in a language other than English, including American Sign Language, and that skill is required as a secondary minimum qualification by the classification specification for the position occupied by the employee, shall be eligible to be paid up to an additional ten percent (10%) of the employee's annual salary as set by § 21-5-209.

(ii) In those instances where the granting of the additional compensation would have the effect of exceeding the maximum annual rate for the grade assigned to the employee's classification, the additional compensation shall not be considered as exceeding the maximum allowable rate for that grade.

(iii) An employee who is receiving additional compensation under the provisions of this section and who moves into a position that does not require the skill to communicate in a language other than English or whose position no longer requires the use of the skill shall revert on the effective date of the change to the rate of pay for which the employee would otherwise receive.

(iv) Authority to implement the provisions of this subsection may be approved by the office after review of the Legislative Council for specific positions identified by agencies and institutions of higher education;

(2)(A) Employees promoted on or after July 1, 1999, shall have the maximum annual salary for which they are eligible established as follows:

(i) For a minor promotion, the employee's maximum rate of pay shall be increased by six percent (6%); and

(ii) For a major promotion, the employee's maximum rate of pay shall be increased by eight percent (8%).

(B)(i) An employee who upon promotion is receiving a rate of pay below Pay Level I for the new grade may be adjusted to the entry level for that grade. In no event, however, may an employee's rate of pay upon promotion exceed the amount provided for by Pay Level IV of the grade assigned to the classification.

(ii) An employee's anniversary date shall not change due to promotion;

(3)(A) Any employee who is assigned to a position in a classification the employee formerly occupied within a twelve-month period after promotion from the classification shall be eligible for a rate of pay no greater than that for which the employee would have been eligible had the employee remained in the lower-graded classification.

(B) Any employee who is placed in a lower-graded position because the original position has expired due to lack of funding, program changes, or withdrawal of federal grant funds may continue to be paid at the same rate as the employee was being paid in the higher-graded position upon approval of the office after seeking the review of the Legislative Council; and

(4)(A)(i) When an employee's position has been approved for reclassification to a classification title of a higher salary grade, the employee shall be eligible for an additional six percent (6%) increase in the new classification.

(ii) Upon reclassification, the salary of an employee who is receiving a rate of pay that is less than the entrance rate for the new grade may be adjusted to the new entrance rate.

(B) When an employee's position has been approved for reclassification to a classification title of a lower salary grade, the employee's pay shall be fixed at a rate in the lower grade which does not exceed the employee's rate of pay in the higher-graded position at the time of reclassification.

(c)(1) In the event that the Chief Fiscal Officer of the State determines that general revenue funds are insufficient to implement the salary increases authorized in this subchapter or by any other law which affects salary increases for state employees, the Chief Fiscal Officer of the State, upon approval of the Governor, may reduce the percentage of all authorized salary increases for all state employees covered by this subchapter without regard to whether the employees

are compensated from general or special revenues, federal funds, or trust funds.

(2) However, if sufficient general revenues should then become available at any time during the biennium to provide the maximum additional salary increases for all state employees without regard to the source of revenues, salary increases for state employees provided for in this subchapter or by any other law may then be fully implemented by the Chief Fiscal Officer of the State.

(d) All percentage calculations stipulated in this subchapter or any other law affecting salaries of state employees may be rounded to the nearest even dollar amount by the office when making the percentage changes to state employee salaries.

History. Acts 1969, No. 199, § 7; 1971, No. 749, § 2; 1973, No. 873, § 7; 1974 (Ex. Sess.), No. 39, §§ 3, 4; 1975, No. 932, § 4; 1979, No. 828, § 4; 1981, No. 650, § 4; 1985, No. 981, § 4; A.S.A. 1947, § 12-3207; Acts 1989, No. 793, § 10; 1991, No. 1148, §§ 5, 6; 1993, No. 770, §§ 2-4; 1995, No. 992, §§ 2, 3; 1997, No. 532, § 2; 1997, No. 899, § 10; 1999, No. 1019, § 3; 2001, No. 1461, § 5; 2003 (1st Ex. Sess.), No. 22, § 2.

Amendments. The 1999 amendment rewrote this section.

The 2001 amendment rewrote (b); and added (e).

The 2003 (1st Ex. Sess.) amendment rewrote (b)(1)(A)(i); inserted (b)(1)(A)(iv); deleted (b)(1)(B); redesignated former (b)(1)(C)-(G) as present (b)(1)(B)-(F); deleted "During the 2001-2002 biennium" at the beginning of present (b)(1)(D)(i); and deleted "2001-2003" preceding "biennium" in (b)(1)(D)(ii).

CASE NOTES

Salary Increases.

There is nothing in this section or § 21-5-209 that would give rise to a protected property interest in promotions or pay raises; this section merely establishes an implementation procedure for grade changes and does not grant any entitlement to a salary increase, and repeatedly refers to an employee's "eligibility" for salary adjustments and merit increases

based upon satisfactory performance ratings. *Jones v. Clinton*, 974 F. Supp. 712 (E.D. Ark. 1997).

It is of no import that this section and § 21-5-209 may establish a range within which an employee's salary must fall as such a requirement does not give rise to a protected property interest in a salary increase. *Jones v. Clinton*, 974 F. Supp. 712 (E.D. Ark. 1997).

21-5-212. Rehired or transferred employees.

When an employee who has been terminated for more than two (2) pay periods returns to state service, the rate of pay of the rehired employee shall be fixed from the last position occupied and shall be calculated as follows:

(1)(A) If returning to the same classification, the employee may return at the same rate of pay.

(B) If that salary falls below Pay Level I, the salary may be adjusted to Pay Level I.

(2)(A) If the employee returns to a different classification of a different grade, the employee's salary will be determined by adjusting

the salary of the former grade to the grade of the new classification on the current authorized pay plan.

(B) If the rate of pay falls below Pay Level I, the salary may be adjusted to Pay Level I.

(3) If a former or transferred employee was previously employed in a nonclassified position according to this subchapter, the rate of pay of the employee may be fixed at a rate within the grade for the classification to which he or she is returning or transferring which does not exceed the salary he or she previously earned.

(4) A former state employee may return as a new employee should the provisions of this section provide a lower salary than he or she could otherwise receive upon entering state service.

History. Acts 1969, No. 199, § 7; 1971, 650, § 4; A.S.A. 1947, § 12-3207; Acts No. 749, § 2; 1973, No. 873, § 7; 1975, No. 1989, No. 793, § 11; 1991, No. 1148, § 7. 932, § 4; 1979, No. 828, § 4; 1981, No.

21-5-213. Employees working late shifts.

(a) Subject to the approval of the agency director or the president or chancellor of the institution of higher education, employees whose working hours do not conform to normal state business hours shall be eligible for additional compensation not to exceed five and one-half percent (5.5%) above that for which they are eligible under this subchapter, provided:

(1) The agency or institution or any sections thereof routinely schedules more than one (1) work shift per day;

(2) The shift to which the employee is assigned is a full work shift beginning not earlier than 2:30 p.m. and ending not later than 8:00 a.m. the next day; and

(3) An employee is regularly assigned to the late shift or is assigned to the shift on a regularly scheduled rotating basis.

(b)(1) Employees at or near the maximum authorized salary level for the grade assigned to their classification may be compensated at an additional rate not to exceed five and one-half percent (5.5%) of their eligible salary under the provisions of this subchapter.

(2) In those instances where the granting of such additional compensation would have the effect of temporarily exceeding the maximum annual rate for the grade assigned to the employee's classification, the additional compensation shall not be considered as exceeding the maximum allowable rate for that grade.

(c) An employee who is receiving additional compensation under the provisions of this section and then is reassigned to a normal shift shall revert, on the day of the reassignment, to the rate of pay for which he or she is eligible under the provisions of this subchapter.

History. Acts 1969, No. 199, § 7; 1969, 981, § 5; A.S.A. 1947, § 12-3207; Acts No. 663, § 1; 1971, No. 749, § 2; 1973, No. 1989, No. 793, § 12; 2001, No. 1461, § 6. 873, § 7; 1975, No. 932, § 4; 1979, No. **A.C.R.C. Notes.** Acts 1991, No. 1085, 828, § 4; 1981, No. 650, § 4; 1985, No. § 27, provided: "Subject to the approval of

the Chief Fiscal Officer, employees of the Department of Human Services institutional facilities who are regularly assigned to a late or weekend shift, or are regularly assigned to a late or weekend shift on a scheduled rotating basis shall be eligible for additional compensation not to exceed five and one-half percent (5½%) above that for which they are otherwise eligible. Such shift differential shall be paid for hours worked on weekends or for hours worked between 3 p.m. and 8 a.m. provided the employee works a minimum of four (4) hours within that time frame on a given work day.

"Employees who are receiving additional compensation under the provisions of this section and then are reassigned to a normal shift shall, on the day of the reassignment, revert to the rate of pay for which they would normally be eligible.

"In those instances where the granting of additional compensation under the terms of this section would have the effect of temporarily exceeding the maximum annual rate for the grade assigned to the employee's classification, the additional compensation shall not be considered as exceeding the maximum allowable rate for that grade."

Acts 1993, No. 1239, § 65, provided: "The Department of Human Services is

hereby authorized to provide special compensation to certain employees for each full eight (8) hour work shift requiring work with patients committed to the Department's forensic services by the Circuit Courts. All of these patients are committed under the Arkansas Criminal Code for evaluation and/or treatment. Also included are the employees who work in cottage or training/testing areas with residents generally described as belonging to a Behavior Treatment Unit. These residents are characterized by their severely aggressive/destructive behavior. This special allowance is to compensate the employee for the increased risk of personal injury while performing job duties at an undesirable location. Rate of pay will be five and one half percent (5½%) above the regular authorized rate and current salary or five and one half percent (5½%) above authorized work schedule shift differential if applicable for individuals working in facility settings."

Amendments. The 2001 amendment substituted "agency director or the president or chancellor of the institution of higher education" for "Chief Fiscal Officer of the State" in (a); and, in (c), inserted "revert" following "shall," deleted "revert" preceding "to the rate" and made gender neutral changes.

21-5-214. New appointments.

New appointments to positions in a state agency or institution of higher education covered by this subchapter shall not be at greater than Pay Level I unless a special rate is requested and approved as follows:

(1)(A) State agencies or institutions of higher education may request special rates of compensation for either current or prospective employees within the agency or institution under the following conditions:

(i) Prevailing market rates of compensation for a specific classification title are such that the agency or institution is unable to competitively recruit at the entry level for the salary grade assigned to that classification;

(ii) An acute shortage of qualified applicants for a specific classification exists;

(iii) The agency or institution desires to obtain the services of an exceptionally well-qualified applicant for a specific classification; or

(iv) To meet any requirements of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

(B)(i) State agencies or institutions of higher education may request special rates of compensation for a specific classification due to prevailing market rates of compensation to hire new employees up to a pay level equal to fifty percent (50%) of the range between Pay Level II and Pay Level III of the appropriate grade with the written approval of the Chief Fiscal Officer of the State or above that level only with the approval of the Chief Fiscal Officer of the State after review by the Legislative Council for new appointments where qualified applicants cannot be obtained at Pay Level I of the assigned grade.

(ii) No special rates of compensation shall be approved under the provisions of this section unless the classification is properly reviewed and approved as a market rate classification and listed on a register of such classifications to be maintained by the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration.

(iii) The office shall file a report of all such classifications with the Legislative Council within the month following such approval.

(C)(i) In all instances where a special rate of compensation has been approved for a specific classification due to prevailing market rates of compensation or an acute shortage of qualified applicants, current employees within the state agency or institution allocated to the affected classifications of Grade 13 and below shall be adjusted to that new rate by the agency or institution if sufficient revenues exist to do so. Current employees within the state agency or institution allocated to affected classifications of Grade 14 and above shall not be adjusted to that new rate by the agency or institution until it has received approval to do so, where justified, by the office after seeking the review of the Legislative Council.

(ii) Agency or institution requests for special rates of compensation due to prevailing market rates or an acute shortage of qualified applicants for a specific classification may be approved up to the maximum annual rate authorized for the grade assigned to a classification.

(iii) The office shall file a report of all such classifications with the Legislative Council within the month following such approval.

(D)(i) Agency directors and presidents and chancellors of institutions of higher education may approve starting salaries for new employees up to the level equal to fifty percent (50%) of the range between Pay Level II and Pay Level III of the appropriate grade. For purposes of this section, "hiring range" means the range of pay rates between Pay Level I and a pay level equal to fifty percent (50%) of the range between Pay Level II and Pay Level III of the appropriate grade. The use of the hiring range shall be in accordance with the guidelines established in this subdivision (1)(D)(i):

(a) The hiring range shall be used only for establishing a starting salary for an employee in an individual position;

(b) Any person hired at or above Pay Level I shall meet or exceed the minimum qualifications for the job classification;

(c) Salary determination within the hiring range shall be based on the applicant's qualifications, competitive compensation rates, and effect on internal equity within the agency or institution;

(d) The hiring of a new employee under the provisions of this section shall not affect the salary level or salary eligibility of any existing employee within the agency or institution;

(e) The office shall have the authority to promulgate rules and regulations regarding the use of the hiring range subject to the approval of the Legislative Council. Agencies and institutions shall not utilize the hiring range until authorized to do so by the office. Authorization for salaries within the hiring range for new appointments referenced in this subsection shall require the approval of the Chief Fiscal Officer of the State until such time that the agency or institution is authorized to do so by the office; and

(f) Quarterly audits of the use of the hiring range by agencies and institutions of higher education shall be performed by the office. Agencies and institutions of higher education that are not in compliance with the use of the hiring range authority shall be reported to the Legislative Council and may have their hiring range authority suspended or revoked pending further investigation by the office.

(ii) A monthly report of new hires above Pay Level I shall be prepared and reviewed by the office. The report shall be presented to the Legislative Council at its regular monthly meeting;

(2)(A) State agencies or institutions may hire a new employee from a pay level equal to fifty percent (50%) of the range between Pay Level II and Pay Level III of the appropriate pay grade up to Pay Level IV with the approval of the Chief Fiscal Officer of the State after review by the Legislative Council, provided that this provision is intended to be used exclusively for the hiring of the exceptionally well-qualified employee whose background and experience qualify the applicant to perform the job with very little or substantially less orientation and training than would be the case for a qualified applicant.

(B) Requests by state agencies or institutions for special rates of compensation based on an exceptional level of qualifications held by a prospective employee may be approved only after the agency or institution has met the following conditions:

(i) The agency or institution has documented to the satisfaction of the Chief Fiscal Officer of the State that no current employee of the affected agency or institution applied for promotion and was determined by the agency to not be an equivalent alternative to the exceptionally well-qualified applicant. The Chief Fiscal Officer of the State shall supply, upon request, any documentation to the Legislative Council; and

(ii) The prospective employee possesses a level of experience or educational credentials that would permit him or her to perform the duties and responsibilities of the position for which the special rate is being requested with significantly less training and orientation than all other qualified applicants.

(C) The hiring of a new employee under subdivision (2) of this section shall not affect the salary level or salary eligibility of any existing employee within the agency or institution.

(D)(i) The provisions of this section shall apply to both current and prospective state employees.

(ii) The provisions of this section shall apply to current employees only in instances where the job has been advertised and the employee has competitively applied for the promotion by submitting a state application for consideration for the position. Otherwise, employees accepting internal promotions shall be compensated in accordance with § 21-5-211(b)(2)(A);

(3) In all instances where approval has been granted to a requesting agency or institution for special rates of compensation in accordance with the provisions of this section, the Chief Fiscal Officer of the State shall report all approvals monthly to the Legislative Council;

(4)(A) There shall be established a pool of two hundred (200) positions at grade 26 assigned to the office to be used to reclassify positions in state agencies and institutions, when justified, to the proper classification and grade when the agency or institution does not have a vacant position available with the appropriate classification and grade.

(B) To obtain a position from the pool, an agency or institution must surrender to the pool the position being reclassified.

(C) The office shall review all requests and may grant approval of the reclassification after seeking the review of the Legislative Council; and

(5) An employee's anniversary date may be changed on approval of the office with the review of the Legislative Council in the event that an inequity is created due to the implementation procedures of this subchapter.

History. Acts 1969, No. 199, § 7; 1969, No. 663, § 1; 1971, No. 749, § 2; 1973, No. 873, § 7; 1975, No. 932, § 4; 1979, No. 828, § 4; 1981, No. 650, § 4; 1985, No. 981, § 6; A.S.A. 1947, § 12-3207; Acts

1989, No. 793, § 13; 1991, No. 1148, §§ 8-11; 1995, No. 992, § 4; 2001, No. 963, § 1; 2001, No. 1461, § 7.

Amendments. The 2001 amendment by Nos. 963 and 1461 rewrote (1) and (2).

21-5-215. [Repealed.]

Publisher's Notes. This section, concerning certified public school employees, was repealed by Acts 1991, No. 1148, § 12. The section was derived from Acts

1969, No. 199, § 5; 1983, No. 671, § 1; A.S.A. 1947, § 12-3205; Acts 1989, No. 793, § 14.

21-5-216. [Repealed.]

Publisher's Notes. This section, concerning Step 8 eligibility, was repealed by Acts 1993, No. 708, § 2. The section was

derived from Acts 1977, No. 909, § 3; A.S.A. 1947, § 12-3204.3; Acts 1989, No. 793, § 15.

21-5-217. [Repealed.]

Publisher's Notes. This section, concerning the employment of Public Information Officers, was repealed by Acts 1991, No. 1148, § 12. The section was

derived from Acts 1977, No. 909, § 4; A.S.A. 1947, § 12-3204.4; Acts 1989, No. 793, § 16.

21-5-218. Reimbursement for interpreter services for deaf.

Whereas the Arkansas Rehabilitation Services of the Department of Workforce Education currently purchases and sells staff interpreter services for the deaf with four (4) other agencies, the University of Arkansas at Fayetteville, the University of Arkansas at Little Rock, the Arkansas School for the Deaf, and the Administrative Office of the Courts and whereas the need for interpreters is immediate and often for crisis purposes and cannot be planned ahead, the Department of Workforce Education is authorized to arrange for reimbursement with those agencies, assuring that the amount paid from both agencies will not exceed the maximum for the grades they occupy consistent with the intent of § 19-4-1604, with notification and justification to the Chief Fiscal Officer of the State.

History. Acts 1989 (1st Ex. Sess.), No. 202, § 9.

A.C.R.C. Notes. Former § 21-5-218, concerning reimbursement for interpreter services for the deaf, is deemed to be

superseded by this section. The former section was derived from Acts 1987, No. 1050, § 10.

Cross References. Interpreters in criminal actions, §§ 16-89-104, 16-89-105.

21-5-219. Nonclassified employees.

(a) Employees compensated with maximum annual salary rates for the biennium as set out in dollars by law enacted by the General Assembly for all departments, boards, commissions, institutions of higher education, and state agencies shall be eligible to receive a two percent (2%) salary increase, provided that the Chief Fiscal Officer of the State determines that sufficient general revenues become available, as lump sum payments.

(b) The payments shall not be construed as exceeding the maximum salary.

History. Acts 1997, No. 532, § 3; 1999, No. 1019, § 4; 2001, No. 1461, § 11; 2003 (1st Ex. Sess.), No. 22, § 3.

A.C.R.C. Notes. References to "this subchapter" in §§ 21-5-201 — 21-5-218 may not apply to this section which was enacted subsequently.

Amendments. The 1999 amendment rewrote this section.

The 2001 amendment rewrote this section.

The 2003 (1st Ex. Sess.) amendment, in (a), deleted "2001-2003" preceding "biennium" and "Eighty Third" preceding "General Assembly."

SUBCHAPTER 3 — SUPPLEMENTAL PERSONAL SERVICES

SECTION.

- 21-5-301. Legislative intent.
- 21-5-302. Definition.
- 21-5-303. Compliance with other laws.
- 21-5-304. Director of the Department of Finance and Administration — Duties.
- 21-5-305. Conditions for use.
- 21-5-306. Investigation of necessity — Advice.

SECTION.

- 21-5-307. Positions authorized — Salaries.
- 21-5-308. Transfer of positions.
- 21-5-309. Transfer of items of appropriations.
- 21-5-310. Expiration of positions — Request to continue.

Effective Dates. Acts 1977, No. 673, § 9; July 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that use of Personal Services Contracts should be discontinued and the new procedures established by this Act are essential to the continued efficient operation of the Departments of State Government. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1977."

Acts 1981, No. 741, § 8; Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly that certain amendments to Act 876 of 1973, the General Accounting and Budgetary Procedures Law, are essential to the continued financial operations of State government; therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

21-5-301. Legislative intent.

It is the intent of the General Assembly that the positions authorized and established in § 21-5-307 shall be used sparingly.

History. Acts 1977, No. 673, § 5; 1981, No. 741, § 5; A.S.A. 1947, § 12-3209n.

21-5-302. Definition.

As used in this subchapter, "supplemental personal services" is defined as those services required by a state agency or institution which meet the following criteria:

- (1) The agency or institution will exercise direct managerial control over the person or persons performing the services;
- (2) The person or persons performing the services are to be considered employees of the state agency or institution; and
- (3) The services provided may be either professional or nonprofessional in nature.

History. Acts 1977, No. 673, § 1; A.S.A. 1947, § 12-3209n.

21-5-303. Compliance with other laws.

(a) Disbursement of funds as authorized in this subchapter shall be limited to the appropriations for the agency and funds made available by law for the support of the appropriations.

(b) The restrictions of the Arkansas Procurement Law, § 19-11-201 et seq., the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., the Revenue Stabilization Law, § 19-5-101 et seq., the Regular Salary Procedures and Restrictions Act, § 21-5-101, and other fiscal control laws of this state, where applicable, and regulations promulgated by the Department of Finance and Administration, as authorized by law, shall be strictly complied with in disbursement of the funds.

History. Acts 1977, No. 673, § 7;
A.S.A. 1947, § 12-3209n.

21-5-304. Director of the Department of Finance and Administration — Duties.

The Director of the Department of Finance and Administration shall:

(1) At least quarterly, report to the Legislative Council all requests for supplemental personal services made by the various state agencies and institutions which have been approved; and

(2) Promulgate rules, regulations, and procedures as necessary to carry out the intent of this subchapter.

History. Acts 1977, No. 673, § 3;
A.S.A. 1947, § 12-3209n.

21-5-305. Conditions for use.

Supplemental personal services should not be requested or utilized except under the following conditions:

(1) When supplemental personal services are absolutely required to fulfill an agency's legal responsibilities but the services were not anticipated at the time of the passage of the agency's or institution's operating appropriation act;

(2) The supplemental personal services requested will be of a short-term, emergency nature; and

(3) The services requested cannot be provided by the existing staff of the agency or institution or other agencies or institutions of the departments of government.

History. Acts 1977, No. 673, § 1;
A.S.A. 1947, § 12-3209n.

21-5-306. Investigation of necessity — Advice.

(a) Before a request for supplemental personal services is submitted, the director of the requesting agency or institution shall conduct a complete and thorough investigation of the necessity of the services to

be performed and shall, by the act of submitting the request for supplemental personal services, certify his or her belief that the services to be performed are necessary to fulfill the legal responsibilities of his or her agency and that the request complies with the intent of this subchapter.

(b) Before establishing a supplemental emergency personal services position and the cost thereof, the Chief Fiscal Officer of the State shall seek the advice of the Legislative Council or the Joint Budget Committee.

History. Acts 1977, No. 673, § 5; 1981, No. 741, § 5; A.S.A. 1947, § 12-3209n.

21-5-307. Positions authorized — Salaries.

(a)(1) There is established in this section the maximum number of supplemental emergency personal services positions whose salaries shall be governed by the provisions of the Uniform Classification and Compensation Act, § 21-5-201 et seq., and all laws amendatory thereto, and by the Regular Salaries Procedures and Restrictions Act, § 21-5-101.

(2) However, where agencies have positions to which specific maximum annual salaries are set out in dollars, the positions transferred pursuant to this subchapter to the agencies shall also be exempt from the provisions of the Uniform Classification and Compensation Act, § 21-5-201 et seq., but shall not be exempt from the Regular Salaries Procedures and Restrictions Act, § 21-5-101.

(3) Further, no position established in this section may receive a salary rate in excess of the highest rate authorized in the requesting agency's or institution's biennial appropriation act.

(b) The following maximum number of emergency personal services positions are established for the three (3) departments of government:

- (1) Executive Department 200
- (2) Legislative Department 50
- (3) Judicial Department 50.

History. Acts 1977, No. 673, § 2; A.S.A. 1947, § 12-3209n.

21-5-308. Transfer of positions.

The positions established in § 21-5-307 may be transferred to the various agencies and institutions of the departments of state government, under the following procedures:

(1) EXECUTIVE DEPARTMENT.

(A) Any Executive Department agency requesting supplemental personal services positions shall make the reasons, justifications, duties to be performed, duration of service needed, and the total anticipated costs associated with the request known to the Governor and the Chief Fiscal Officer of the State.

(B) The Chief Fiscal Officer of the State shall conduct an investigation of the requests to determine if the proposed use of supplemental personal services complies with the definitions established in this subchapter and shall recommend to the Governor, in writing, his or her reasons for recommending approval or disapproval of the agency's or institution's requests after which the Governor shall make his or her determination to grant or deny the request in whole or in part;

(2) LEGISLATIVE DEPARTMENT.

(A) Any legislative agency requesting supplemental personal services shall make the reasons, justification, duties to be performed, duration of service needed, and the total anticipated costs associated with the request known to the cochairs of the Legislative Council and the Chief Fiscal Officer of the State.

(B) The chairs of the Legislative Council and Legislative Joint Auditing Committee, jointly, shall conduct an investigation of the request to determine if the proposed use of supplemental personal services complies with the definitions established in this subchapter and shall recommend in writing their reasons for recommending approval or disapproval of the request to the Legislative Council for its advice, after which the Chief Fiscal Officer of the State shall establish the necessary accounts;

(3) JUDICIAL DEPARTMENT.

(A) Any judicial agency requesting supplemental personal services shall make the reasons, justification, duties to be performed, duration of service needed, and the total anticipated costs associated with the request known to the Chief Justice of the Supreme Court and the Chief Fiscal Officer of the State.

(B) The Chief Justice of the Supreme Court shall conduct an investigation of the request to determine if the proposed use of supplemental personal services complies with the definitions established in this subchapter and shall grant or deny the request in whole or in part and submit his or her recommendations to the Legislative Council for its advice after which the Chief Fiscal Officer of the State shall establish the necessary accounts.

History. Acts 1977, No. 673, § 3;
A.S.A. 1947, § 12-3209n.

21-5-309. Transfer of items of appropriations.

(a) The Chief Fiscal Officer of the State is authorized to transfer within each operating appropriation of the requesting agency the required and appropriate amounts of appropriations from maintenance and general operation, or professional services line items, to the supplemental emergency personal services, social security and retirement matching, and state employees' insurance line items for the purpose of providing sufficient amounts in the appropriate classifications of appropriations, in order to pay the salaries and associated

salary matching costs of the supplemental emergency personal services positions transferred under the procedures of this subchapter.

(b) However, nothing in this subchapter shall be construed to allow the Chief Fiscal Officer of the State to create additional appropriations or transfer any funds from a fund or fund account to another fund or fund account under the provisions of this subchapter.

History. Acts 1977, No. 673, § 4; A.S.A. 1947, § 12-3209n.

21-5-310. Expiration of positions — Request to continue.

(a) The positions authorized and the appropriations transferred under the authority of this subchapter shall expire at the end of the biennial period in which they are established.

(b) Each agency or institution shall include in its biennial budget request presented to the Legislative Council any request to continue any emergency personal services authorized by this subchapter.

History. Acts 1977, No. 673, § 6; 1981, No. 741, § 6; A.S.A. 1947, § 12-3209n.

SUBCHAPTER 4 — STATE AND PUBLIC SCHOOL LIFE AND HEALTH INSURANCE BOARD

SECTION.

- 21-5-401. Legislative intent.
- 21-5-402. Members.
- 21-5-403. Policy-making body only — Reports.
- 21-5-404. Powers — Functions — Duties.
- 21-5-405. Additional duties.
- 21-5-406. Executive director — Staff.
- 21-5-407. Definitions.
- 21-5-408. Compensation.
- 21-5-409. [Repealed.]
- 21-5-410. Employees — Eligibility.
- 21-5-411. Eligibility of certain retired employees.
- 21-5-412. Eligibility of certain elected officers.

SECTION.

- 21-5-413. Employer contributions.
- 21-5-414. State contributions generally — Partial state contribution of employees' premiums.
- 21-5-415. Nonpayment of premiums and failure to file reports by agency or school district.
- 21-5-416. Annual performance audits.
- 21-5-417. State contribution for employee receiving workers' compensation.

A.C.R.C. Notes. Acts 1991, No. 867, § 1, provided: "The Governor may, by executive order, transfer the State Employees Insurance Section of the Department of Finance and Administration to the State Insurance Department at such time as he determines it to be in the best interest of the State Employees Insurance Program."

Acts 1995, No. 1206, § 9, provided: "The State Employees Insurance Advisory

Committee created by Arkansas Code 21-5-401 is abolished effective July 1, 1995. Arkansas Code 21-5-402, 21-5-403, 21-5-404, 21-5-405, 21-5-406, 21-5-407, 21-5-408, 21-5-409 are repealed. All rights, powers and duties of that Committee are transferred to the board created under the provisions of this act. The Public School Insurance Advisory Committee created by Arkansas Code 6-17-1102 is abolished effective July 1, 1995. Arkansas Code 6-17-

1101, 6-17-1103, 6-17-1104, 6-17-1105, 6-17-1106, 6-17-1107, 6-17-1108 and 6-17-1110 are repealed. All rights, powers and duties of that Committee are transferred to the board created under the provisions of this act. Any funding or contracts now in force or authorized by the 1995 Regular Session of the General Assembly shall be carried forward to the Arkansas State Employees/Public School Personnel Board until the expiration of the contracts."

Acts 2001, No. 776, § 1, provided: "STATE EMPLOYEE BONUS. (a) On the effective date of this act, or as near thereto as possible, each state agency, board, commission and institution shall provide a bonus of four hundred fifty dollars (\$450.00) to each employee who meets the following conditions:

"(1) the employee is scheduled to work at least 1,000 hours per year; and

"(2) the employee must be on the agency's, board's, commission's or institution's payroll for the previous two (2) pay periods or be on leave without pay; and

"(3) the employee must participate in the State Employees Insurance program.

"(b) The funds received by the employee from this act shall not be used when determining retirement benefits for the employee."

Cross References. Damages adjudged against state officers and employees, payment by state, § 21-9-201 et seq.

Preambles. Acts 1977, No. 389, contained a preamble which read: "Whereas, the General Assembly hereby finds and recognizes that there has been a dramatic increase in the medical care cost in the past few years and that this cost will continue to rise at the rate of approximately twenty percent (20%) a year for the next two years; and

"Whereas, the State Employees Insurance Committee will make a concerted effort to maintain the current cost to the State employees; and

"Whereas, the proposed legislation will provide a twenty percent (20%) increase in the State's contribution for each year of the 1977-1979 biennium; and

"Whereas, the increased contribution will not be used unless it becomes necessary to keep the plan sound;

"Now, therefore ..."

Acts 1979, No. 323, contained a preamble which read: "Whereas, the General Assembly hereby finds and recognizes

that there has been a dramatic increase in the medical care cost in the past few years and that this cost will continue to rise at the rate of approximately twenty percent (20%) a year for the next two years; and

"Whereas, the State Employees Insurance Committee will make a concerted effort to maintain the current cost to the State employees; and

"Whereas, the proposed legislation will provide a twenty percent (20%) increase in the State's contribution for each year of the 1979-1981 biennium; and

"Whereas, the increased contribution will not be used unless it becomes necessary to keep the plan sound;

"Now, therefore ..."

Acts 1981, No. 838, contained a preamble which read: "Whereas, the General Assembly hereby finds and recognizes that there has been a dramatic increase in the medical care cost in the past few years and that this cost will continue to rise at the rate of approximately twenty percent (20%) a year for the next two years; and

"Whereas, the State Employees Insurance Committee will make a concerted effort to maintain the current cost to the State employees; and

"Whereas, the proposed legislation will provide a twenty percent (20%) increase in the State's contribution for each year of 1981-1983 biennium; and

"Whereas, the increased contribution will not be used unless it becomes necessary to keep the plan sound;

"Now, therefore ..."

Acts 1983, No. 469, contained a preamble which read: "Whereas, the General Assembly hereby finds and recognizes that there has been a dramatic increase in the cost of medical care in the past few years and that this cost will continue to rise for the next two years; and

"Whereas, the State Employees Insurance Advisory Committee will make a concerted effort to maintain the current cost to the State employees; and

"Whereas, the proposed legislation will provide an increase in the State's contribution for each year of 1983-1985 biennium; and

"Whereas, the increased contribution will not be used unless it becomes necessary to keep the plan sound;

"Now, therefore ..."

Effective Dates. Acts 1972 (Ex. Sess.), No. 48, § 17: Feb. 18, 1972. Emergency

clause provided: "It is hereby found and determined by the Sixty-Eighth General Assembly, meeting in Extraordinary Session that the State of Arkansas does not have a life and/or disability insurance program for the State Employees, and that a program of this nature would greatly enhance the morale and well-being of the employees of the State of Arkansas. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1973, No. 72, §§ 2, 4: July 1, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that under Amendment No. 7 to the Arkansas Constitution, acts without an emergency clause become effective 90 days after final adjournment of the General Assembly; that due to the unusually heavy workload of the Sixty-Ninth General Assembly it may be necessary to extend the Session, as authorized in Article 5, Section 17 of the Constitution and that an extension of the Session might result in this Act not becoming effective until after July 1, 1973 unless an emergency is declared; and that it is essential that this Act go into effect on July 1, 1973. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 842, § 4: Apr. 16, 1973. Emergency clause provided: "The General Assembly finds that a change in the administrative organization of the State Employees Insurance Section is necessary to secure the more efficient functioning of the said Section. An emergency is therefore declared to exist, and this Act, being necessary for the public health, welfare, and safety, shall be effective from and after its passage and approval."

Acts 1975, No. 156, § 2: July 1, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential that the State of Arkansas offer and provide insurance programs that will effectively serve the needs of state employees; that such insurance programs are of great assistance in recruiting permanent personnel for the var-

ious state agencies; that under Amendment No. 7 to the Arkansas Constitution, acts without an emergency clause become effective 90 days after final adjournment of the General Assembly; that it may be necessary to extend the Session, as authorized in Article 5, Section 17 of the Constitution and that an extension of the Session might result in this Act not becoming effective until after July 1, 1975, unless an emergency is declared; and that it is essential that this Act go into effect on July 1, 1975. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1975."

Acts 1975, No. 575, § 4: Mar. 27, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is urgent need to clarify the present law relating to the membership of the State Employees Insurance Advisory Committee; that under the present State Employees Group Insurance Law the Administrative personnel of the State Police Retirement, and Members of the Teacher Retirement System who have retired or who hereafter retire and draw benefits under said systems are not eligible to participate in the State Employees Group Insurance Plan and that the law should be revised to permit participation by such retired employees at the earliest possible date; and that this Act is designed to accomplish these worthwhile purposes and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 389, § 3: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential that the State of Arkansas offer and provide insurance programs that will effectively serve the needs of State employees; that such insurance programs are of great assistance in recruiting permanent personnel for the various State agencies; that under Amendment No. 7 to the Arkansas Constitution, acts without an emergency clause become effective 90 days after final adjournment of the General Assembly; that it may be

necessary to extend the Session, as authorized in Article 5, Section 17 of the Constitution and that an extension of the Session might result in this Act not becoming effective until after July 1, 1977, unless an emergency is declared; and that it is essential that this Act go into effect on July 1, 1977. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1977."

Acts 1979, No. 323, § 3: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential that the State of Arkansas offer and provide insurance programs that will effectively serve the needs of State employees; that such insurance programs are of great assistance in recruiting permanent personnel for the various State agencies; that under Amendment No. 7 to the Arkansas Constitution, acts without an emergency clause become effective 90 days after final adjournment of the General Assembly; that it may be necessary to extend the Session, as authorized in Article 5, Section 17 of the Constitution and that an extension of the Session might result in this Act not becoming effective until after July 1, 1979, unless an emergency is declared; and that it is essential that this Act go into effect on July 1, 1979. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1979."

Acts 1981, No. 749, § 9: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the immediate passage of this Act is necessary to prevent irreparable harm to the proper administration and provision of essential government programs. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1981, No. 838, § 10: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential that the State of Arkansas offer and provide insurance pro-

grams that will effectively serve the needs of State employees; that such insurance programs are of great assistance in recruiting permanent personnel for the various State agencies; that under Amendment No. 7 to the Arkansas Constitution, acts without an emergency clause become effective 90 days after final adjournment of the General Assembly; that it may be necessary to extend the Session, as authorized in Article 5, Section 17 of the Constitution and that an extension of the Session might result in this Act not becoming effective until after July 1, 1981, unless an emergency is declared; and that it is essential that this Act go into effect on July 1, 1981. Therefore, an emergency is hereby declared to exist and this Act being necessary for immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1983, No. 423, § 7: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly that the immediate passage of this Act is necessary to prevent irreparable harm to the proper administration and provision of essential government programs. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1983."

Acts 1983, No. 469, § 3: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential that the State of Arkansas offer and provide insurance programs that will effectively serve the needs of State employees; that such insurance programs are of great assistance in recruiting permanent personnel for the various State agencies; that under Amendment No. 7 to the Arkansas Constitution, acts without an emergency clause become effective 90 days after final adjournment of the General Assembly; that it may be necessary to extend the Session, as authorized in Article 5, Section 17 of the Constitution and that an extension of the Session might result in this Act not becoming effective until after July 1, 1983, unless an emergency is declared; and that it is essential that this Act go into effect on July 1, 1983. Therefore, an emergency is hereby declared to exist and this Act being

necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from July 1, 1983."

Acts 1983, No. 582, § 3: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly that it is essential to the administration of the State Employees Insurance Program that premiums and reports be received when due from State Agencies. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after July 1, 1983."

Acts 1985 (1st Ex. Sess.), No. 35, § 4: June 26, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws relating to State Group Health Insurance does not specifically authorize retired instructors and administrative staff of vocational-technical schools and retired members of the Vocational-Technical Division to participate in the State group health insurance plan; that this oversight should be corrected immediately in order to avoid hardship and inequity to such personnel; that this Act is designed to correct this undesirable situation and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 711, § 3: Mar. 20, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly of the State of Arkansas that the current prohibition against an agency continuing contributions to health insurance programs for employees who are leave with pay because of a work related injury is creating a severe financial hardship for employees who have been injured on the job. Therefore, in order to address this serious problem, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 127, § 5: July 1, 1991. Emergency clause provided: "It is hereby

found and determined by the General Assembly that the present law establishing the amount of contribution made by the State to help defray the cost of state employee's life and health insurance expires on June 30, 1991; that this Act establishes the contribution level to begin upon the expiration of the current law; and that this Act should therefore go into effect on July 1, 1991. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1993, No. 904, § 5: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the effectiveness of this act on July 1, 1993 is essential to the operation of the State Employees Insurance Plan and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1993 could work irreparable harm upon the proper administration of this essential governmental program. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1995, No. 580, § 5: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that this act increases the state's contribution to the State Employees Insurance Plan; that this act should go into effect on the first day of the next fiscal year; and that unless this emergency clause is adopted this act will not go in effect until after the beginning of the next fiscal year. Therefore an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1995."

Acts 1995, No. 1206, § 14: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to the effective and efficient management of the state employee and the public school personnel health insurance programs that a single board be established to administer the programs and that this act is designed to accomplish this purpose and should be

given effect on a specific date in order to assure a smooth transition to the single board concept. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 183, § 8: Feb. 17, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Insurance and Commerce and in its place established the House Interim Committee and Senate Interim Committee on Insurance and Commerce; that various sections of the Arkansas Code refer to the Joint Interim Committee on Insurance and Commerce and should be corrected to refer to the House and Senate Interim Committees on Insurance and Commerce; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall be-

come effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 843, § 5: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that appropriate health care insurance coverage and benefits be provided state employees and that it is essential to the effective and efficient management of the state employee and public school personnel health insurance program that maximum monthly contributions by the State of Arkansas for life and health insurance premiums are authorized for the next and subsequent bienniums. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1997."

Acts 1997, No. 1354, § 51: Apr. 14, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act affects the method of selection of alternate members of the Legislative Council and Legislative Joint Auditing Committee and that this act is immediately necessary for proper continuity and efficiency in State government. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1280, § 19: Apr. 9, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that provisions contained in this bill be enacted into law. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the

Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1171, § 2: Mar. 28, 2001. Emergency clause provided: "It is found and determined by the General Assembly that the State and Public School Life and Health Insurance Plan does not provide retirees on other health insurance plans with the option to return to coverage under the state's plan after retirement; that providing this option to state employees and state retirees will provide extra motivation and work incentives for Arkansas public employees; that providing this option will not cost the State and Public School Life and Health Insurance Plan since there are no associated employer costs with this coverage; and that providing this option is immediately needed for retirees who may suffer financially if insurance coverage is not extended. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1752, § 3: Apr. 18, 2001. Emergency clause provided: "It is found and determined by the General Assembly that a person retiring from certain institutions of higher education during 2001 will experience uncertainty regarding their eligibility for group health insurance coverage; that providing immediate eligibility for health insurance benefits to those retirees is necessary for the preservation of the public peace, health and safety. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it

shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1814, § 5: Apr. 18, 2001. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that many state and public school employees participate in benefits offered through a cafeteria plan; that many state and public school employees participate in voluntary health, disability and other insurance programs; that the Employee Benefits Division of the Department of Finance and Administration is charged with the responsibility of administering these plans; that the existing law governing these plans is in need of clarification in order to allow the Employee Benefits Division to obtain bids for these programs at the lowest possible rates; that state and public school employees are in need of obtaining these programs at the lowest possible rates; and, that this act is necessary in order to achieve those objectives. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 826, § 4: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that unreimbursed expenses are being withdrawn from the State Employees Benefits Trust Fund of the State and Public School Employees Insurance Fund; that this act is needed to prevent confusion and uncertainty concerning these funds; and that this act is immediately necessary to recover costs to the State Employees Benefits Trust Fund of the State and Public School Employees Insurance Fund as required by law. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public

peace, health, and safety shall become effective on July 1, 2003.”

21-5-401. Legislative intent.

It is the purpose of this subchapter to:

(1) Create a single board to set policy and select plans and coverages for the state employee and public school personnel health and life insurance and self-funded medical programs, so as to enhance the ability to control premiums, expand health care options, and utilize managed care capabilities where feasible and in the best interest of state employees and public school personnel, and study alternate funding arrangements which minimize or eliminate problems associated with selection among multiple methods of funding plans when more than one (1) program is utilized;

(2) Propose future goals and measures to address the common objectives of both groups, including improving quality of health care services under the program, increasing participants' understanding of the program features, and slowing the rate of growth in health care expenses under the program; and

(3) Enable a single board to set and manage policies for the programs in a concerted effort and to work toward a common goal that multiple benefit options be made available to participants under both public school and state employee current programs.

History. Acts 1995, No. 1206, § 1; 1999, No. 1280, § 1.

A.C.R.C. Notes. Acts 1995, No. 1206, § 9, provided, in part: “The State Employees Insurance Advisory Committee created by Arkansas Code 21-5-401 is abolished effective July 1, 1995.”

Publisher's Notes. Former § 21-5-401, concerning the State Employees Insurance Advisory Committee, was deemed to be repealed by Acts 1995, No. 1206, § 9. The former section was derived from Acts

1972 (Ex. Sess.), No. 48, § 1; A.S.A. 1947, § 12-3101.

Amendments. The 1999 amendment, in (1), substituted “set policy and select plans and coverages for” for “manage,” and inserted “and life,” “health care options, and utilize” and “and in the best interest of state employees and public school personnel”; and substituted “set and manage policies for” for “manage” in (3).

CASE NOTES

Recommendations Not Rule-Making.

Recommendations by a state board as to the adoption of a mail order service and change in the reimbursement rates of a pharmacy service plan for state and public school employees did not constitute “rule-making” within § 25-15-202(8) and (9) of the Arkansas Administrative Procedure

Act, § 25-15-201 et seq., and accordingly, the notice and hearing provisions therein did not have to be complied with; such recommendations were within the board's legislatively mandated duties pursuant to this section. Ark. Pharmacist's Ass'n, Inc. v. Ark. State & Pub. Sch. Life & Health Ins. Bd., 352 Ark. 1, 98 S.W.3d 27 (2003).

21-5-402. Members.

(a)(1) There is created the State and Public School Life and Health Insurance Board, composed of the following twelve (12) voting members:

- (A) A state employee to be appointed by the Governor;
- (B) A certified classroom teacher to be appointed by the Governor;
- (C) The Insurance Commissioner or his or her designee;
- (D) The Director of the Department of Education or his or her designee;

(E) The Director of the Department of Finance and Administration or his or her designee;

(F) Two (2) members who are engaged in employee benefits management or risk management in private industry to be appointed by the Governor;

(G) One (1) additional member position which shall be filled alternately by a retired teacher and by a retired state employee appointed by the Governor. This position shall first be filled by a retired teacher for a term of four (4) years, then by a retired state employee for a term of four (4) years, and four-year terms thereafter shall be alternated between a retired teacher and a retired state employee;

(H) One (1) public school administrator to be appointed by the Governor;

(I) The Executive Director of the Arkansas State Board of Pharmacy or his or her state employee pharmacist designee;

(J) The Director of Health Facility Services of the Department of Health or his or her designee; and

(K) One (1) member who is a licensed health care provider appointed by the Governor.

(2) However, any appointee who has a conflict of interest shall be disqualified to serve.

(b)(1)(A) Except for retiree positions, the members initially appointed by the Governor shall draw lots for terms so that two (2) serve for a term of four (4) years each, two (2) for a term of three (3) years, one (1) for a term of two (2) years, and one (1) for a term of one (1) year.

(B) All successor members appointed by the Governor shall be appointed for terms of four (4) years but may be reappointed for additional terms.

(2)(A) Vacancies in the Governor-appointed positions shall be filled by appointment of the Governor for the unexpired term.

(B) Members appointed by the Governor shall serve at the will of the Governor.

(c) A chair and vice chair of the board shall be selected annually by and from the membership of the board and shall serve no more than two (2) years.

History. Acts 1995, No. 1206, §§ 2, 3; 1997, No. 633, § 1; 1999, No. 1280, § 2; 2003, No. 1446, § 1.

A.C.R.C. Notes. As enacted by Acts 1995, No. 1206, § 2, subdivision (b)(1) began: "The six members initially appointed by the Governor shall draw lots for terms so that one will serve for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. All successor ..."

As enacted by Acts 1995, No. 1206, § 3, subsection (c) began: "The initial chairman and vice chairman of the board shall be designated by the Governor for terms of one year. Subsequent ..."

Publisher's Notes. Former § 21-5-402, concerning appointment and terms of committee members, was repealed by Acts 1995, No. 1206, § 9. The former section was derived from Acts 1972 (Ex. Sess.), No. 48, §§ 2, 3; 1975, No. 575, §§ 1, 2;

1981, No. 749, §§ 1, 2; 1981, No. 838, §§ 3, 4; 1983, No. 668, §§ 1, 2; A.S.A. 1947, §§ 12-3102, 12-3103; Acts 1987, No. 844, §§ 1, 2; 1991, No. 867, § 2.

Amendments. The 1999 amendment rewrote this section.

The 2003 amendment substituted "twelve (12)" for "ten (10)" in the introductory paragraph of (a)(1); made gender neutralization changes throughout (a)(1); inserted present (a)(1)(I) and (J) and redesignated former (a)(1)(I) as present (a)(1)(K); deleted "In addition, there shall be" from the beginning of present (a)(1)(K); added the subdivision designations in (b)(1) and (2); made a stylistic change in (b)(1)(A); and substituted "A chair and vice chair of the board ... two (2) years" for "A chair and a vice chair shall be selected annually from the membership of the board by the Governor, to serve one-year terms" in (c).

21-5-403. Policy-making body only — Reports.

(a) The State and Public School Life and Health Insurance Board shall be a policy-making body only.

(b) The executive director shall report upon request to the House Interim Committee on Insurance and Commerce and the Senate Interim Committee on Insurance and Commerce regarding the state employees and public school personnel insurance program.

History. Acts 1995, No. 1206, § 8; 1997, No. 183, § 3; 1999, No. 1280, § 3.

Publisher's Notes. Former § 21-5-403, concerning compensation of committee members, was repealed by Acts 1995, No. 1206, § 9. The former section was derived from Acts 1972 (Ex. Sess.), No. 48, § 5; A.S.A. 1947, § 12-3105.

Amendments. The 1999 amendment substituted "State and Public School Life and Health Insurance Board" for "board" in (a); and, in (b), deleted "board through the" preceding "executive" and substituted "upon request" for "at least quarterly."

21-5-404. Powers — Functions — Duties.

The State and Public School Life and Health Insurance Board shall have the following powers, functions, and duties:

(1) To explore various cost containment measures and funding options;

(2) To promote competition among vendors and create a systematic formula for measuring competitiveness of programs, quality of care delivery, portability, and accessibility to, and affordability of, health care;

(3) To prepare a comprehensive analysis of the various health benefit plan options approved by the board to provide coverage to state and public school employees, including cost, quality, and access differentials

among the various plans, as well as any other comparisons of the plans as will enable the state and school employees to make a well-informed choice of plans;

(4) To undertake studies and to take any appropriate action which the board determines will promote the financial soundness and overall well-being of the state employee and public school personnel health insurance programs;

(5) To develop, with the assistance of the Office of State Procurement of the Department of Finance and Administration, bid specifications and requests for proposals and evaluate bids and proposals, but shall allow the office to execute all other actions relating to the purchasing procedures in contracting for consultants, third party administrators, providers, or insurance companies on behalf of the programs;

(6) To evaluate responses to requests for proposals, select contractors for all services, and approve the award of contracts resulting from bids for all health and life insurance offerings for participants of the various plans;

(7) To perform plan design, summarize plan document approval, including, but not limited to, lifetime limitations, copayments, deductibles, and eligibility rules;

(8) To promote increased access to various health plan options and models;

(9) To direct the office to contract with all qualified vendors, as defined by the board, offering the health benefit plans prescribed by the board without regard to § 19-11-228 or other statutes requiring competitive bidding. Each contract shall be for a uniform term of at least one (1) year but may be made automatically renewable from term to term in the absence of notice of termination by either party; and

(10) To appoint three (3) subcommittees of the board to study and research health and life plan option benefits, formulary management, and the financial impact of implementing the recommendations made by the formulary management committee to the board as follows:

(A)(i) The Benefits Subcommittee shall consist of:

(a) Three (3) board members;

(b) Two (2) state employees; and

(c) Two (2) school district employees.

(ii) The Benefits Subcommittee shall review, evaluate, and investigate benefits, new benefit offerings, and annual insurance rates;

(B)(i) The Drug Utilization and Evaluation Subcommittee shall consist of:

(a) Two (2) pharmacists, one (1) of whom is the Executive Director of the Arkansas State Board of Pharmacy or his or her state employee pharmacist designee and one (1) of whom is the Dean of the University of Arkansas for Medical Sciences College of Pharmacy or his or her pharmacist designee;

(b) Two (2) physicians, one (1) of whom is the physician health care provider serving on the board and one (1) of whom is the Dean of the University of Arkansas for Medical Sciences College of Medicine or his or her physician designee; and

(c) One (1) registered nurse who is the Dean of the University of Arkansas for Medical Sciences College of Nursing or his or her registered nurse designee.

(ii) The Drug Utilization and Evaluation Subcommittee shall review drugs for formulary management; and

(C)(i) The Fiscal Subcommittee shall include two (2) board members, two (2) state employees, and two (2) public school employees who shall have expertise in accounting, finance, auditing, or insurance.

(ii) The Fiscal Subcommittee shall review and evaluate the financial impact of the recommendations made by the Drug Utilization and Evaluation Subcommittee.

History. Acts 1995, No. 1206, § 4; 1999, No. 1280, § 4; 2003, No. 1446, § 2.

Publisher's Notes. The former § 21-5-404, concerning prohibited activities of committee members, was repealed by Acts 1995, No. 1206, § 9. The former section

was derived from Acts 1972 (Ex. Sess.), No. 48, § 4; A.S.A. 1947, § 12-3104; Acts 1991, No. 867, § 3.

Amendments. The 1999 amendment rewrote this section.

The 2003 amendment added (10).

21-5-405. Additional duties.

(a) The State and Public School Life and Health Insurance Board and the executive director shall take a risk management approach in designing the state employee and public school personnel health benefit programs. The board shall ensure that the state employee and public school personnel health benefit programs are maintained on an actuarially sound basis as determined by actuarial standards established by the board.

(b) In addition to the objectives stated in § 21-5-404, the board shall:

(1) Develop uniform standards of vendor plan funding so as to avoid windfall profits resulting from fully insured nondividend-paying funding arrangements;

(2) Promote increased access to various plan options and health care models;

(3) Promote access to managed care by giving preferential treatment, if required, to those vendors who will enhance plan options availability in rural Arkansas;

(4)(A) Utilize the combined purchasing power of the state employee and public school personnel programs to foster competition among vendors and providers for the programs.

(B) Any state agency or school district that accepts state funds intended to partially defray the cost of health insurance for the employees of the state and public schools shall use those funds only for the state employee and public school personnel health benefit plans sponsored by the board and agrees to rules of participation, including, but not limited to, timely eligibility reporting, timely payment of premiums, or contributions, actuarial adjustment for new entrants, and any other information deemed necessary by the board;

- (5) Assure guaranteed issue of all plans; and
- (6) Ensure an annual enrollment period under all plans.

History. Acts 1995, No. 1206, § 5; § 7; 1981, No. 749, § 3; 1981, No. 838, 1997, No. 1295, § 1; 1999, No. 1280, § 5. § 5; 1983, No. 423, § 1; A.S.A. 1947, § 12-3107; Acts 1991, No. 867, § 4; 1992 (1st Ex. Sess.), No. 27, § 1; 1992 (1st Ex. Sess.), No. 28, § 1.

Publisher's Notes. Former § 21-5-405, concerning committee officers and proceedings, was repealed by Acts 1995, No. 1206, § 9. The former section was derived from Acts 1972 (Ex. Sess.), No. 48,

Amendments. The 1999 amendment rewrote this section.

21-5-406. Executive director — Staff.

(a)(1) The State and Public School Life and Health Insurance Board shall choose an executive director with the approval of the Director of the Department of Finance and Administration.

(2) The executive director shall be employed by and serve at the pleasure of the Director of the Department of Finance and Administration. However, the board may recommend the removal of the executive director, but removal shall be subject to the approval of the Director of the Department of Finance and Administration.

(3) The executive director shall employ staff adequate to manage the program within the funds appropriated therefor within the Department of Finance and Administration.

(b)(1) The executive director and his or her staff shall be located in the Employee Benefits Division of the Department of Finance and Administration.

(2) Premiums collected from employers, participating employees, and retirees for health and life insurance plans shall be used solely to pay medical claims, premiums, and direct administrative expenses of the health and life insurance programs.

(c)(1) The executive director shall be charged with the duty of administering the provisions of this subchapter and the rules, regulations, and orders of the division and the board.

(2)(A) The executive director shall have the authority to supervise the implementation and day-to-day management of the health insurance programs and other employee benefit programs, plans, and individual and group policies made available to public school employees and state employees.

(B) This may include, but not be limited to:

- (i) Life insurance coverages;
- (ii) Accident coverages;
- (iii) Dental coverages;
- (iv) Disability benefit programs;
- (v) Optional retirement programs;
- (vi) Deferred compensation;
- (vii) Cafeteria plans; and

(viii) Such other benefit plans, benefit programs, and individual and group benefit coverages that are offered from time to time to public school employees and state employees.

(C) This authority shall not include the State Employee Benefit Corporation benefit plan which is in effect on July 1, 1995.

(d) In addition, the executive director and the board may utilize the services of health care consultants and actuaries if necessary as provided for through the appropriation of the division.

(e) The Arkansas State Police Employee Health Plan shall be exempt from any mandatory participation required by this section.

History. Acts 1995, No. 1206, §§ 7, 8; 1999, No. 1280, § 6; 2001, No. 1814, §§ 1, 4.

Publisher's Notes. Former § 21-5-406, concerning committee powers and duties, was repealed by Acts 1995, No. 1206, § 9. The former section was derived from Acts 1972 (Ex. Sess.), No. 48, § 9; 1973, No. 842, § 3; 1975, No. 576, §§ 1, 2; 1981, No. 749, § 5; 1981, No. 838, § 7; 1983, No. 423, §§ 2, 3; A.S.A. 1947, §§ 12-

3109, 12-3109.1; Acts 1992 (1st Ex. Sess.), No. 27, § 2; 1992 (1st Ex. Sess.), No. 28, § 2.

Amendments. The 1999 amendment rewrote this section.

The 2001 amendment redesignated former (a) as (a)(1) through (a)(3); inserted "or her" in (b)(1); deleted "of the Department of Finance and Administration" following "Division" in (c)(1) and (d); and added (e).

CASE NOTES

Cited: Ark. Pharmacist's Ass'n, Inc. v. Ark. State & Pub. Sch. Life & Health Ins. Bd., 352 Ark. 1, 98 S.W.3d 27 (2003).

21-5-407. Definitions.

As used in this subchapter:

(1) "Dependent" means any member of an employee's or retiree's family who meets the eligibility for coverage under the health benefit plans approved by the State and Public School Life and Health Insurance Board;

(2) "Employee" means a state employee or a public school district employee;

(3) "Public school district employee" means all public school district salaried employees;

(4) "Retiree" means a retired employee who is eligible under the provisions of § 21-5-411;

(5) "State" means the State of Arkansas; and

(6) "Vendor" means:

(A) A corporation, partnership, or other organization licensed to do business in the State of Arkansas; and

(B) A corporation, partnership, or other organization licensed to do business in the State of Arkansas which is lawfully engaged in administering employer-funded health benefit plans for employer groups in consideration of an administration fee payable to the vendor.

History. Acts 1995, No. 1206, § 7; 1999, No. 1280, § 7.

A.C.R.C. Notes. Acts 1999, No. 1280, § 7 changed the catchline of this section

from "Authorized to accept funds and employ staff" to "Definitions" and repealed language concerning the authority of the Arkansas State Employee and Public

School Personnel Board to apply for and accept grant funds, employ staff, and make purchases.

Publisher's Notes. Former § 21-5-407, concerning the supervisor of the State Employees Insurance Section, was repealed by Acts 1995, No. 1206, § 9. The

former section was derived from Acts 1972 (Ex. Sess.), No. 48, §§ 6, 8; 1973, No. 842, §§ 1, 2; 1981, No. 749, § 4; 1981, No. 838, § 6; A.S.A. 1947, §§ 12-3106, 12-3108.

Amendments. The 1999 amendment rewrote this section.

21-5-408. Compensation.

State and Public School Life and Health Insurance Board members may receive from the Department of Finance and Administration expense reimbursement as authorized by law and stipends in accordance with § 25-16-901 et seq.

History. Acts 1995, No. 1206, § 6; 1997, No. 250, § 213; 1997, No. 1354, § 39; 1999, No. 1280, § 8.

Publisher's Notes. Former § 21-5-408, concerning cooperation among agencies, was repealed by Acts 1995, No. 1206,

§ 9. The former section was derived from Acts 1972 (Ex. Sess.), No. 48, § 14; A.S.A. 1947, § 12-3114.

Amendments. The 1999 amendment rewrote this section.

21-5-409. [Repealed.]

Publisher's Notes. This section, concerning procedure for selecting policies, was repealed by Acts 1995, No. 1206, § 9. The section was derived from Acts 1972

(Ex. Sess.), No. 48, § 11; 1973, No. 574, § 1; 1981, No. 749, § 6; 1981, No. 838, § 8; A.S.A. 1947, §§ 12-3111, 12-3111.1.

21-5-410. Employees — Eligibility.

(a) Eligible employees shall include:

(1) All actively employed permanent employees of eligible participating agencies, boards, commissions, institutions, and constitutional offices;

(2) Members of the General Assembly;

(3) Elected constitutional officers;

(4) Appointed or elected board and commission members who are on a full-time salaried basis; and

(5) Those state contract employees hired by the Arkansas National Guard on a full-time basis in accordance with the provisions of 10 U.S.C. § 2304.

(b) Membership of the contract employees of the Arkansas National Guard is conditioned upon the United States Government contributing the employer's share to the State Employees Insurance Section of the Department of Finance Administration.

(c) Membership of state employees is conditioned upon the employee being in a budgeted state employee position or a position authorized by the General Assembly.

(d) Permanent employees are those whose employment is not seasonal or temporary and whose actual performance of duty requires one thousand (1,000) or more working hours per year.

(e) If a participating institution discontinues its participation in the group health insurance program instituted pursuant to the provisions

of this subchapter, then the institution may not reparticipate in the program for one (1) year after the institution's final date of participation in the program unless the executive director of the Employee Benefits Division of the Department of Finance and Administration gives his or her consent to an earlier date.

(f) The Arkansas State Police Employee Health Plan shall be exempt from any mandatory participation required by this section.

History. Acts 1972 (Ex. Sess.), No. 48, § 13; 1975, No. 575, § 3; 1977, No. 206, § 1; 1983, No. 423, § 4; 1985 (1st Ex. Sess.), No. 35, § 1; A.S.A. 1947, § 12-3113; Acts 2001, No. 1814, §§ 2, 4.

Amendments. The 2001 amendment

substituted "Employees — Eligibility" for "Eligibility of employees generally" in the section head; redesignated former (a) as present (a)(1) through (a)(5); added (c); redesignated former (c) as present (d); and added (e) and (f).

21-5-411. Eligibility of certain retired employees.

(a)(1) State employees shall be eligible to continue coverage and, if qualified, to participate in the group health insurance program instituted pursuant to the provisions of this subchapter and other laws enacted to implement the program who are:

(A) Members of:

(i) The Arkansas Public Employees' Retirement System, including the members of the legislative division and the contract personnel of the Arkansas National Guard;

(ii) The Arkansas Teacher Retirement System;

(iii) The Arkansas State Highway Employees' Retirement System;

(iv) The Arkansas Judicial Retirement System; or

(v) An alternate retirement plan; and

(B) Retired and drawing benefits under the systems or retire and receive benefits under the systems.

(2)(A)(i) If members of these retirement systems receive retirement benefits, thereby becoming active retirees, the active retirees shall elect to enroll in a health benefit program sponsored by the State and Public School Life and Health Insurance Board.

(ii) The election to enroll shall be made within thirty-one (31) days of the member's becoming an active retiree and shall be made in writing to the executive director of the State and Public School Life and Health Insurance Board on forms prescribed by the board.

(B) To be eligible to continue coverage or to qualify for coverage after electing to decline participation, the member must have been covered or been eligible for coverage on the last day of the member's employment.

(C)(i) Except as provided in subdivision (a)(2)(C)(ii) of this section, an active retiree's failure to make an election during the thirty-one-day election period or an active retiree's election to decline participation in the health program is final.

(ii) If an active retiree declining coverage specifies in writing that the reason for the declination is because the active retiree has coverage through another insurance program or group health plan

and the active retiree's coverage is subsequently terminated because of a loss of eligibility, then the active retiree and any dependents shall qualify for coverage in a health benefit program under this subsection upon payment of the appropriate premium as established by the board, provided the active retiree applies for coverage within thirty-one (31) days of the loss of eligibility. Any subsequent termination of health benefits by the retiree is final.

(3)(A) Notwithstanding any other provision to the contrary in this section, an employee with ten (10) or more years of creditable service under the terms of a retirement plan listed in this section shall qualify for continuation of health insurance coverage offered by the board if that employee is separated from employment because of the expiration of a fixed period of employment.

(B)(i) An employee qualifying for continuation of coverage under this subsection shall be considered an "inactive retiree" and shall have thirty-one (31) days from the effective date of termination to elect to continue health insurance coverage under this section by notifying the executive director. The election shall be made upon forms prescribed by the board.

(ii) The agency or school district from which the employee was terminated must certify the applicant's qualifications to the Employee Benefits Division of the Department of Finance and Administration.

(C)(i) Except as provided in subdivision (a)(3)(C)(ii) of this section, an inactive retiree's failure to make an election during the thirty-one-day election period or an inactive retiree's election to decline participation in the health program is final.

(ii) If an inactive retiree declining coverage specifies in writing that the reason for the declination is because the inactive retiree has coverage through another insurance program or group health plan and the inactive retiree's coverage is subsequently terminated because of a loss of eligibility, then the inactive retiree and any dependents shall qualify for coverage in a board-sponsored health benefit program upon payment of the appropriate premium as established by the board, provided the inactive retiree applies for coverage within thirty-one (31) days of the loss of eligibility.

(D) An inactive retiree shall be charged a premium determined by the board to be actuarially sound, along with administrative fees deemed appropriate.

(E) An inactive retiree shall not be eligible to return to the board-sponsored health program if for any reason the inactive retiree ceases coverage at any time after election under this subsection.

(F) An inactive retiree shall be reclassified as an "active retiree" upon electing to receive a retirement benefit by a retirement system listed within this section and shall be charged the premium rate appropriate for his or her rating category as an active retiree.

(4)(A) As used in this subsection, "loss of eligibility" means a loss of coverage as a result of a legal separation, divorce, death, termination of employment, or a reduction in the number of hours of employment.

(B) "Loss of eligibility" shall not include a loss of coverage from a failure to pay premiums, a failure to pay premiums on a timely basis, or a termination of coverage for cause, such as making a fraudulent claim.

(b)(1) Persons who draw retirement benefits under the Arkansas Public Employees' Retirement System, the Arkansas Teacher Retirement System, or the Arkansas State Highway Employees' Retirement System, and retired contract employees of the Arkansas National Guard who wish to participate in the group insurance program provided for in this subchapter shall pay the retiree amount of the premium or the cost of the policy issued to the retired participant.

(2) The retiree portion of the premium or cost shall be deducted from the retirement benefit checks of the retired participants.

(c)(1) Eligible employees of institutions of higher education, technical institutes, the Department of Higher Education, the Department of Workforce Education, and the Arkansas Rehabilitation Services of the Department of Workforce Education who are retired with at least five (5) years of creditable service after July 1, 1983, shall be allowed to participate in the group insurance program provided for in this subchapter but shall pay the full amount of the premium or cost of the policy issued to the retired participant.

(2) All eligible participants must make an option selection of coverage within thirty-one (31) days subsequent to the date of their notification of termination or retirement.

(d) Members of the Arkansas Public Employees' Retirement System and the Arkansas State Highway Employees' Retirement System who retire before January 2, 1988, under the provisions of the Incentives for Early Retirement Act, §§ 24-4-732, 24-5-122, and 24-6-102, shall not have to pay the full amount of the premium and shall pay a portion of the cost of the policy as set forth by the Incentives for Early Retirement Act, §§ 24-4-732, 24-5-122, and 24-6-102.

(e) Any future change in coverage other than cancellation shall be extended only to newly acquired dependents, except that if an active or inactive retiree declined dependent coverage at the time of election to be an active or inactive retiree and specified in writing that the reason for the declination was that the dependent had other coverage, and if subsequently the dependent involuntarily loses such coverage, except for fraud or voluntary cessation of premium payment while the active or inactive retiree is covered by the plan, then the dependent may be added within thirty-one (31) days of the involuntary termination to the active or inactive retiree's health insurance coverage for payment of the appropriate premium as established by the board.

History. Acts 1972 (Ex. Sess.), No. 48, § 13; 1975, No. 575, § 3; 1977, No. 206, § 1; 1983, No. 423, § 4; 1985 (1st Ex. Sess.), No. 35, § 1; A.S.A. 1947, § 12-3113; Acts 1987, No. 514, § 1; 1997, No. 1295, § 2; 1999, No. 1280, § 9; 2001, No. 1171, § 1; 2001, No. 1752, §§ 1, 2.

Amendments. The 1999 amendment rewrote this section.

The 2001 amendment by Nos. 1171 and

1752 rewrote (a); in (c), added "technical institutes ... and the Arkansas Rehabilitation Services," and substituted "five (5)" for "ten (10)"; in (e), added "and specified

in writing that the reason for the declination was that the"; and made stylistic changes.

21-5-412. Eligibility of certain elected officers.

(a) Members of the General Assembly and the state elected constitutional officers who have served a sufficient number of years of credited service to be eligible for retirement benefits upon attainment of retirement age, but who have not yet reached retirement age, shall be eligible to continue to participate in state employees life and disability programs upon leaving elective service.

(b) Upon ending his or her service in the House of Representatives or Senate, or as a state elected constitutional officer, a person shall have a period of six (6) months to elect whether or not to continue participation in the state employees life and disability programs in accordance with the programs as currently in effect.

(c)(1) Any person who is leaving the General Assembly or any state elected constitutional officer who wishes to participate in the state employees life and disability program provided for in this subchapter shall pay the full amount of the premium or cost of the policy issued to the participant, including the amount which the state is otherwise authorized to pay.

(2) The payments shall be made on a semimonthly, monthly, or quarterly basis as determined by the State and Public School Life and Health Insurance Board and shall be remitted through the state agency or office from which the person last received his or her salary as a member of the General Assembly or as a state elected constitutional officer.

History. Acts 1972 (Ex. Sess.), No. 48, Sess.), No. 35, § 1; A.S.A. 1947, § 12-§ 13; 1975, No. 575, § 3; 1977, No. 206, 3113.
§ 1; 1983, No. 423, § 4; 1985 (1st Ex.

21-5-413. Employer contributions.

The percentage of the premiums or costs to be paid by the participating employer shall be authorized by the General Assembly.

History. Acts 1972 (Ex. Sess.), No. 48, § 12; A.S.A. 1947, § 12-3112.

21-5-414. State contributions generally — Partial state contribution of employees' premiums.

(a) The Department of Finance and Administration shall seek the advice of the Legislative Council and the House Interim Committee on Insurance and Commerce and the Senate Interim Committee on Insurance and Commerce before additional contributions can be made.

(b)(1) The State of Arkansas, on behalf of agencies participating in the plans adopted by the state, is authorized to make a monthly

contribution equal to the number of budgeted state employee positions multiplied by the monthly contribution authorized by the Chief Fiscal Officer of the State, not to exceed three hundred fifty dollars (\$350) monthly for each state employee budgeted position into a fund designated for state employee health benefits, to partially defray the cost of life and health insurance for employees of the state participating in the plan sponsored by the State and Public School Life and Health Insurance Board.

(2) The department may make a monthly contribution to partially defray the cost of health insurance for state employee retirees, utilizing funds made available for that purpose, not to exceed the amount authorized by the Chief Fiscal Officer of the State.

History. Acts 1973, No. 72, § 1; 1975, No. 156, § 1; 1977, No. 389, § 1; 1979, No. 323, § 1; 1981, No. 838, §§ 1, 2; 1983, No. 469, §§ 1, 2; 1985, No. 615, § 1; A.S.A. 1947, §§ 12-3115, 12-3115.1; Acts 1987, No. 743, § 1; 1989, No. 21, § 1; 1991, No. 127, § 1; 1991, No. 867, § 5; 1993, No. 904, § 1; 1995, No. 580, § 1; 1995, No. 1206, § 10; 1997, No. 183, § 4; 1997, No. 843, § 1; 1999, No. 1280, § 10; 2001, No. 185, § 1.

Amendments. The 1999 amendment substituted "Department of Finance and Administration" for "Arkansas State Em-

ployee and Public School Personnel Board" in (a); and rewrote (b).

The 2001 amendment redesignated former (b) as present (b)(1) and (b)(2); in (b)(1), substituted "multiplied by" for "times," "three hundred fifty dollars (\$350)" for "two hundred seventy-five dollars (\$275)," and "State and Public School Life and Health Insurance Board" for "board"; and, in (b)(2), substituted "department" for "Department of Finance and Administration" and "for that purpose" for "for such purpose."

21-5-415. Nonpayment of premiums and failure to file reports by agency or school district.

(a)(1) If any participating agency or school district does not remit insurance premiums to the Employee Benefits Division of the Department of Finance and Administration by twenty (20) calendar days after the pay period ending date, the division shall have the right to impose interest of ten percent (10%) per annum on the moneys due.

(2) Interest will be computed on the actual days of delinquency, with a minimum charge being billed when appropriate.

(3) Interest payable will be determined using the date the delinquent funds are received, and an invoice for the interest shall be sent to the agency or school district.

(b)(1) Payment shall be payable to the group insurance trust funds and must be received by the division no later than the last calendar day of the month following billing.

(2) If payment is not received by the division by the last calendar day of the month following billing, the following collection methods may be used:

(A)(i) The Chief Fiscal Officer of the State may cause the interest payable to be transferred to the division from:

- (a) Funds the agency has on deposit with the Treasurer of State; or
- (b) Any funds the school district is due from the state.

(ii) If a transfer must be made, a transfer penalty of twenty dollars (\$20.00) per transfer may be assessed each agency or school district fund and included in the transfer;

(B) The agency director or school district superintendent may be required to appear before the State and Public School Life and Health Insurance Board to report the reasons for nonpayment; and

(C) The Chief Fiscal Officer of the State may use his or her powers outlined in § 19-4-301 et seq. to aid in collection.

(c) Nonpayment of premiums could also result in a lapse of health and life insurance coverage for employees of the school district, agency, or the agency assuming responsibility for paying health and life claims for its employees.

(d)(1) In the event any participating agency or school district fails to file the necessary reports with the division by twenty (20) calendar days after the due date, the division shall have the right to impose a penalty of fifty dollars (\$50.00) per insured.

(2) An additional penalty of fifty dollars (\$50.00) per insured will be assessed for each subsequent reporting period the overdue report remains in arrears.

(e)(1) An invoice for this penalty will be sent to the agency or school district, and payment shall be payable to the group insurance trust funds and must be received by the division no later than the last calendar day of the month following billing.

(2) If payment is not received by the division by the last calendar day of the month following billing, the following collection methods may be used:

(A)(i) The Chief Fiscal Officer of the State may cause the interest payable to be transferred to the division from:

(a) Funds the agency has on deposit with the Treasurer of State; or

(b) Any funds the school district is due from the state.

(ii) If a transfer must be made, a transfer penalty of twenty dollars (\$20.00) per transfer may be assessed each agency fund and included in the transfer;

(B) The agency director or school district superintendent may be required to appear before the board to report the reasons for nonpayment; and

(C) The Chief Fiscal Officer of the State may use his or her powers as outlined in § 19-4-301 et seq. to aid in collection.

(f)(1) If any participating agency or school district fails to notify the division of an insured's leave without pay, family medical leave, or military leave status, provides incorrect benefit information, or processes unauthorized benefit changes, including system entries that result in unreimbursed expenses to the State Employees Benefits Trust Fund of the State and Public School Employees Insurance Fund, the division shall have the right to:

(A) Require the agency to pay the total amount of the insured's premium; and

(B) Impose a penalty of fifty dollars (\$50.00) per insured.

(2)(A) The Chief Fiscal Officer of the State may cause the amount sought to be transferred from:

- (i) Funds the agency has on deposit with the Treasurer of State; or
- (ii) Any funds the school district is due from the state.

(B) If a transfer is made, a transfer penalty of twenty dollars (\$20.00) per transfer may be assessed each agency or school district fund and included in the transfer.

(g) The division may correct any error regarding an insured benefit according to existing documentation without authorization.

History. Acts 1972 (Ex. Sess.), No. 48, § 8; 1973, No. 842, § 2; 1981, No. 749, § 4; 1981, No. 838, § 6; 1983, No. 582, § 1; A.S.A. 1947, § 12-3108; Acts 1997, No. 1295, § 3; 2003, No. 826, § 2.

Amendments. The 2003 amendment added the subdivision designations in (a); rewrote present (a)(1), (b)(1) and (d)(1); inserted "per insured" in (d)(2); rewrote (e); and added (f) and (g).

21-5-416. Annual performance audits.

The Legislative Joint Auditing Committee shall annually conduct a performance audit of the entity administering claims and of the Employee Benefits Division of the Department of Finance and Administration.

History. Acts 1981, No. 749, § 7; 1981, No. 838, § 9; A.S.A. 1947, § 12-3109.2; Acts 2003, No. 826, § 3.

Amendments. The 2003 amendment substituted "Employee Benefits Division" for "State Employees Insurance Section."

21-5-417. State contribution for employee receiving workers' compensation.

Notwithstanding any other provisions of the law, a state agency may remit the employer's contribution to a health insurance program for state employees when the employee is in a leave without pay status, provided that the employee is in a leave without pay status because of a work-related injury and is receiving benefits from workers' compensation.

History. Acts 1989, No. 711, § 1.

SUBCHAPTER 5 — DEFERRED COMPENSATION

SECTION.

- 21-5-501. Definition.
- 21-5-502. Applicability.
- 21-5-503. Effect on other benefits.
- 21-5-504. Authority of state or political subdivision.
- 21-5-505. Authority of the Department of Finance and Administration.

SECTION.

- 21-5-506. Administration of programs.
- 21-5-507. Payments by administrator.
- 21-5-508. Taxation of deferred income.
- 21-5-509. Exclusive benefit.
- 21-5-510. Liability of state or political subdivision.

Effective Dates. Acts 1975, No. 669, § 12: Mar. 28, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that immediate passage of this Act is necessary to permit employees and agencies of the state, counties, cities, towns and other political subdivisions to become parties to deferred compensation agreements. Therefore an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 937, § 6: Mar. 31, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that immediate passage of this Act is necessary to permit employees and agencies of the State, counties, cities, towns and other political subdivisions to become parties to deferred compensation agreements. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 1280, § 19: Apr. 9, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that provisions contained in this bill be enacted into law. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the

Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1596, § 6: Apr. 13, 2001. Emergency clause provided. "It is found and determined by the General Assembly that existing law concerning public employees' deferred compensation plans does not conform with the requirements of IRC § 457; that failure to comply with these requirements may result in unintended income tax liabilities for public employees; that existing law concerning public employees' deferred compensation plans currently provides few alternatives for investing deferred compensation; that additional investment alternatives are necessary to enable public employees to maximize their earnings from deferred compensation investments. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

21-5-501. Definition.

For the purpose of this subchapter, "employee" means any person, partnership, or professional association whether appointed, elected, or under contract, providing services for the state, county, city, town, or other political subdivision for which compensation is paid.

History. Acts 1975, No. 669, § 4; A.S.A. 1947, § 12-1621.

21-5-502. Applicability.

This subchapter shall apply to all deferred compensation plans adopted by agencies subsequent to March 28, 1970, which shall all be subject to the rules and regulations issued by the Department of

Finance and Administration under the authority granted in this subchapter.

History. Acts 1975, No. 669, § 9; 1977, No. 937, § 4; A.S.A. 1947, § 12-1626; Acts 1999, No. 1280, § 12.

Amendments. The 1999 amendment substituted "Department of Finance and Administration" for "Arkansas State Employee and Public School Personnel Board."

21-5-503. Effect on other benefits.

The deferred compensation program established by this subchapter shall exist and serve in addition to retirement, pension, or benefit systems established by the state, county, city, town, or other political subdivision, and no deferral of income under the deferred compensation program shall effect a reduction of any retirement, pension, or other benefit provided by law.

History. Acts 1975, No. 669, § 6; A.S.A. 1947, § 12-1623.

21-5-504. Authority of state or political subdivision.

(a) The state or any county, city, town, or other political subdivision may agree, by contract, with any employee to defer, in whole or in part, any portion of that employee's future compensation to a deferred compensation program.

(b)(1) The administrator of the deferred compensation program may:

(A) Contract for, purchase, or otherwise procure annuity contracts for the deferred compensation program; and

(B) Through a trust or custodian, contract for, purchase, or otherwise procure fixed or variable life insurance contracts, mutual funds, pooled investment funds, or such other investment vehicles that comply with state and federal laws and which permit the deferral of compensation for income tax purposes.

(2) If an annuity or life insurance contract is purchased, then it must be purchased from an insurance company licensed to contract business in this state, and any insurance agent selling such contracts must be licensed by this state.

History. Acts 1975, No. 669, § 1; A.S.A. 1947, § 12-1618; Acts 2001, No. 1596, § 1.

Amendments. The 2001 amendment, in (a), substituted "may, by contract, agree" for "may agree, by contract" and added "to a deferred compensation program" after "future compensation"; and rewrote (b).

21-5-505. Authority of the Department of Finance and Administration.

(a) The Department of Finance and Administration is authorized to enter into contractual agreements with employees on behalf of the state to defer any portion of that employee's future compensation.

(b) The department may, upon request, designate an officer or officers within any state agency, department, board, commission, or

institution to enter into such contractual agreements with employees of that particular state agency, department, board, commission, or institution.

History. Acts 1975, No. 669, § 2; 1977, No. 937, § 1; A.S.A. 1947, § 12-1619; Acts 1999, No. 1280, § 13.

Amendments. The 1999 amendment substituted “the Department of Finance

and Administration” for “Arkansas State Employee and Public School Personnel Board” in the section catchline and in (a); and substituted “The department” for “The board” in (b).

21-5-506. Administration of programs.

(a)(1) The administration of the state government employees’ deferred compensation program shall be under the direction of the Executive Director of the Employee Benefits Division of the Department of Finance and Administration.

(2) Administration of other deferred compensation programs authorized by this subchapter shall be under the direction of the appropriate officer designated by the county, city, town, or other political subdivision.

(b) The administrator of the deferred compensation program is authorized and empowered to promulgate any and all regulations deemed necessary to carry out the intent and purposes of this subchapter.

(c) Deferrals of compensation shall be made in each instance by the appropriate disbursing officer and shall be paid over to an annuity contract or to a trust or custodial account maintained for the deferred compensation program without unreasonable delay.

(d) The administrator of the deferred compensation program may contract with a private corporation or institution for providing trust, custodial, investment, record keeping, legal, accounting, and other administrative services, and the cost of such services may be paid from the assets of the deferred compensation program.

History. Acts 1975, No. 669, § 3; 1977, No. 937, § 2; A.S.A. 1947, § 12-1620; Acts 1999, No. 1280, § 14; 2001, No. 1596, § 2.

Amendments. The 1999 amendment substituted “Department of Finance and Administration” for “Arkansas State Employee and Public School Personnel Board” in (a)(1); and substituted “The Department” for “The board” in (b).

The 2001 amendment inserted “Executive Director of the Employee Benefits Division of the” in (a)(1); substituted “de-

partment, or the appropriate officer designated by the county, city, town, or other political subdivision” for “administrator of the deferred compensation program” in (b); in (c), substituted “income” for “compensation,” added “and shall be paid ...without unreasonable delay” and made minor changes in punctuation; and substituted “consolidated billing and other administrative services” for “trust, custodial ...compensation program” in (d).

21-5-507. Payments by administrator.

(a) Notwithstanding any other provision of law to the contrary, the Executive Director of the Employee Benefits Division of the Department of Finance and Administration or the appropriate officer of the

county, city, town, or other political subdivision designated to administer the deferred compensation program is authorized:

(1) To make payments of premiums for the purchase of annuity contracts under the deferred compensation program; and

(2) To make payments to a trustee or custodian holding fixed or variable life insurance contracts, annuity contracts, mutual funds, pooled investment funds, or other investment vehicles under the deferred compensation program.

(b) The payments shall not be construed to be a prohibited use of the general assets of the state, county, city, town, or other political subdivision.

History. Acts 1975, No. 669, § 5; 1977, No. 937, § 3; A.S.A. 1947, § 12-1622; Acts 1999, No. 1280, § 15; 2001, No. 1596, § 3.

Amendments. The 1999 amendment substituted “Department of Finance and

Administration” for “Arkansas State Employee and Public School Personnel Board.”

The 2001 amendment rewrote this section.

21-5-508. Taxation of deferred income.

Any sum deferred under the deferred compensation program shall not be subject to income taxation until distribution is actually made to the employee.

History. Acts 1975, No. 669, § 6; A.S.A. 1947, § 12-1623.

21-5-509. Exclusive benefit.

All amounts of compensation deferred pursuant to a deferred compensation program, all property and rights purchased with such amounts, and income attributed to such amounts, property, and rights shall be held in one (1) or more annuity contracts, custodial accounts, or in trust for the exclusive benefit of the employees and their beneficiaries participating in such a program.

History. Acts 1975, No. 669, § 8; A.S.A. 1947, § 12-1625; Acts 2001, No. 1596, § 4.

Amendments. The 2001 amendment rewrote this section.

21-5-510. Liability of state or political subdivision.

The financial liability of the state, county, city, town, or other political subdivision under a deferred compensation program authorized by this subchapter shall be limited in each instance to:

(1) An amount determined by reference to the value of the annuity contracts which may have been purchased with respect to any employee;

(2) An amount determined by reference to the value of the employee's interest in a trust or custodial account holding mutual funds, in pooled investment funds, or in other investment vehicles purchased on behalf of the employee; and

(3) Any amounts deferred but not paid over to the annuity contracts, trusts, or custodial accounts.

History. Acts 1975, No. 669, § 7; A.S.A. 1947, § 12-1624; Acts 2001, No. 1596, § 5.

Amendments. The 2001 amendment inserted (2) and made related changes; substituted "particular contract" for "an-

nuity contracts" in present (1); and substituted "expended in purchase of the contracts" for "paid over to the annuity contracts, trusts, or custodial accounts" in present (3).

SUBCHAPTER 6 — PUBLIC EMPLOYEE WORKERS' COMPENSATION ACT

SECTION.

21-5-601. Title.

21-5-602. Legislative intent.

21-5-603. Definitions.

21-5-604. Workfare participants excluded.

21-5-605. Public Employee Claims Division.

21-5-606. Division attorneys.

21-5-607. Claim, review, and appeal procedures.

SECTION.

21-5-608. Report of injury, death, or exposure.

21-5-609. Benefits for emergency service volunteer workers.

21-5-610. Workers' compensation benefits in conjunction with certain other benefits.

A.C.R.C. Notes. The effect of Acts 1985, No. 866 (14-26-101 et seq., 14-60-101 et seq.) and this subchapter, read together, was to supersede the two pre-existing laws on workers' compensation coverage for municipal and county officers (Acts 1973, Nos. 469 and 470) which were deleted from the Code.

Cross References. State Insurance Department, § 23-61-101 et seq.

Workers' compensation, § 11-9-101 et seq.

Preambles. Acts 1979, No. 809, contained a preamble which read: "Whereas, the General Assembly finds that an inherent conflict exists in the processing of Public Employee workers' compensation claims because the Workers' Compensation Commission serves as both initial determiner and final arbiter of claims; and

"Whereas, the General Assembly recognizes that Public Employee workers' compensation claims are currently being administered by the Public Employee Claims Section of the Workers' Compensation Commission; and

"Whereas, the General Assembly finds that the Public Employee compensation claims are inadequately defended against possible fraud and misuse; and

"Whereas, the General Assembly finds

that the full incurred costs associated with payment of Public Employee workers' compensation claims are not routinely known;

"NOW, THEREFORE, the Legislature of the State of Arkansas recognizes the need for one single program to administer Public Employee claims for workers' compensation and enacts this measure for the achievement of that purpose."

Effective Dates. Acts 1979, No. 809, § 11: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the Arkansas General Assembly that it is necessary to establish one single program for the administration of Public Employee claims for workers' compensation. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in full force from and after July 1, 1979."

Acts 1981, No. 916, § 5: Mar. 30, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that 'workfare' projects have been recently initiated in several counties within the State thereby creating a need to immediately establish the legal status of the 'workfare' participants for the purpose of workers' compensation coverage.

Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 929, § 8: Mar. 31, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Public Employee Claims Division needs clarification of State workers' compensation fund coverages for the public worker and of its duties and responsibilities under this Act. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981 (Ex. Sess.), No. 33, § 5[6]: Dec. 2, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, meeting in Extraordinary Session, that passage of this Act is necessary for continued maintenance and operation of County Roads in the State of Arkansas by increasing the appropriation to permit counties to receive available funds, and for providing an appropriation to expend funds transferred from the Military Lands Fund so that counties having lands in military reservations may receive funds as provided by law to continue critical services. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after the date of its passage and approval."

Acts 1985, No. 285, § 3: Mar. 7, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that workers' compensation benefits paid to injured public employees, or on their behalf, under Act 809 of 1979 are paid from funds appropriated from general revenues of the State of Arkansas, that when such injuries to a public em-

ployee are caused by the tortious conduct of a third party, the public employee, or his dependents, may make claim or maintain an action against such third party, that public employees have heretofore been successful in recovering from such third parties, or their liability carriers, but have effectively circumvented the lien claim of the State of Arkansas under Ark. Stats. Section 81-1340 by settling around the State of Arkansas pursuant to *St. Paul Fire and Marine Insurance Company v. Wood*, 242 Ark. 879, 416 S.W.2d 322 (1967), that this type of 'settlement around' the State of Arkansas has resulted in a substantial loss of general revenues, that such lien claim of the State of Arkansas should be absolute when any recovery is made from a third party, or his liability carrier, by the injured public employee or his dependents as a result of injuries for which such public employee has received workers' compensation benefits under Act 809 of 1979, whether such recovery is by settlement with or judgment against the third party, to eliminate continued losses of general revenues. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the general revenues of the State of Arkansas shall be in full force and effect from and after the date of its passage and approval."

Acts 1993, No. 901, § 52: Apr. 6, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws addressed in this omnibus Act on workers' compensation benefits and insurance licensure and other insurance regulatory issues are inadequate for the protection of the Arkansas public and immediate passage of this Act is necessary in order to provide for the protection of the public. Therefore, an emergency is hereby declared to exist and this omnibus Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

UALR L.J. Powell, *Survey of Workers' Compensation Law*, 3 UALR L.J. 329 (1980).

Notes, *Workers' Compensation — Stat-*

ute of Limitations on Seeking Additional Benefits. *Mohawk Rubber Co. v. Thompson*, 265 Ark. 16, 576 S.W.2d 216 (1979), 3 UALR L.J. 513 (1980).

Legislative Survey, Workers' Compensation, 8 UALR L.J. 617.

Arkansas Law Survey, Baker, Workers' Compensation, 9 UALR L.J. 213.

CASE NOTES

ANALYSIS

Dual liability.

Effect of procedural amendment.

Newly discovered evidence.

Reconsideration of claim.

Strict compliance with exclusionary provisions.

Dual Liability.

Where dual coverage exists between a private insurance company and the state workers' compensation fund for injuries incurred by the employees of a city, either one or both of the carriers are liable, but only for the benefits mandated by the act; the injured employee may not receive double payments which exceed the maximum disability benefits. *City of Waldo v. Poetker*, 275 Ark. 216, 628 S.W.2d 329 (1982).

Where the mayor of a city notified the Workers' Compensation Commission that the city would continue its private workers' compensation plan, but the city failed to provide the commission with a copy of its policy and was subsequently placed by the commission on the list of cities participating in the state plan, there was dual coverage and dual liability between the private insurance company and the state fund for injuries to employees of that city and the only equitable and fair way to apportion the loss was to divide it equally between the plans. *City of Waldo v. Poetker*, 275 Ark. 216, 628 S.W.2d 329 (1982).

Effect of Procedural Amendment.

The 1979 amendment to this section, which deleted a portion prohibiting judicial review in an action of the Workers' Compensation Commission with respect to a claim by a municipal employee, was a procedural one affecting the manner in which one could enforce the substantive rights conferred on claimants and employers under the Workers' Compensation Act and, thus, did not violate the prohibition under § 1-2-120 against changes in substantial rights. *Office of Emergency Servs. v. Home Ins. Co.*, 2 Ark. App. 185, 618 S.W.2d 573 (1981).

Newly Discovered Evidence.

Where the claimant filed a petition for rehearing of the denial of disability benefits on the ground that there was newly discovered evidence, but it appeared that all of the evidence which he claimed was newly discovered was actually within his knowledge before the case was originally submitted to and decided by the commission, the motion for a rehearing was properly denied. *Walker v. J & J Pest Control*, 6 Ark. App. 171, 639 S.W.2d 748 (1982).

Reconsideration of Claim.

Inasmuch as the commission must reconsider "any compensation order, award or decision," on its own motion or upon application of any interested party and "upon such review may make an order or award terminating, continuing, decreasing or increasing for the future the compensation previously awarded," due process of law dictates that an employee who has been denied benefits should be afforded the same opportunity to have his claim reconsidered where he has discovered subsequently to the denial of benefits that he has a meritorious claim. *Walker v. J & J Pest Control*, 270 Ark. App. 941, 606 S.W.2d 597 (1980).

Strict Compliance with Exclusionary Provisions.

Where a city was covered by a private workers' compensation policy, but failed to furnish a copy to the Workers' Compensation Commission by a specified date, two widows of city policemen were entitled to coverage from both the private plan and the municipal aid fund under this section since this section automatically extends state fund coverage to city employees in workers' compensation cases unless there is strict compliance with all the exclusionary provisions of the fund act; the failure of the city to strictly comply with the fund act's exclusionary provisions mandates a finding of coincidental or dual coverage and, consequently, dual liability. *City of Waldo v. Poetker*, 3 Ark. App. 12, 621 S.W.2d 491 (1981), *aff'd*, 275 Ark. 216, 628 S.W.2d 329 (1982).

21-5-601. Title.

This subchapter shall be known and cited as the "Public Employee Workers' Compensation Act".

History. Acts 1979, No. 809, § 3;
A.S.A. 1947, § 12-3603.

CASE NOTES

Cited: South Cent. Ark. Drug Task Force v. Ray, 56 Ark. App. 30, 937 S.W.2d 682 (1997).

21-5-602. Legislative intent.

It is the purpose of this subchapter to:

(1) Provide workers' compensation coverage through state funds for all public employees, as defined in this subchapter, who are not otherwise covered under a workers' compensation liability insurance policy written and issued by a private workers' compensation liability carrier;

(2) Consolidate the administration of benefits for the public employees covered by state funds;

(3) Consolidate the legal representation and defense of the state workers' compensation funds; and

(4) Establish and define the Public Employee Claims Division of the State Insurance Department as the unit of state government charged with payments of benefits provided by this subchapter.

History. Acts 1979, No. 809, § 2; 1981, No. 929, § 3; A.S.A. 1947, § 12-3602.

CASE NOTES

Cited: South Cent. Ark. Drug Task Force v. Ray, 56 Ark. App. 30, 937 S.W.2d 682 (1997).

21-5-603. Definitions.

(a) The term "public employee", as used in this subchapter, includes:

(1) State employees and officers of any state agency, board, commission, department, institution, college, university, or community college receiving an appropriation for regular salaries, extra help, or authorized overtime payable from funds deposited in the State Treasury or depositories other than the State Treasury by the General Assembly, provided that inmates of state correctional facilities who perform work for the state while incarcerated or while on a work-release program shall not be considered state employees;

(2) Public school employees and officers of the various school districts of this state;

(3)(A) Municipal employees and officers of the municipalities of this state, and the employees of any board, commission, department, or institution owned, operated, managed, and administered by the municipalities.

(B) However, employees of municipally owned hospitals and nursing homes operated, managed, or administered by private management companies or enterprises, whether under a contract for management, or under a lease agreement, or under any other type of management arrangement, are not public employees within the meaning of this subchapter and shall not be provided state fund coverage for workers' compensation benefits under the provisions of this subchapter;

(4)(A) County employees and officers of the counties of this state, and the employees of any board, commission, department, or institution owned, operated, managed, and administered by the counties, including employees of county-owned hospitals and nursing homes operated, managed, or administered by private management companies or enterprises under a management agreement under the terms of which the employees retain their employment status as county employees.

(B) However, employees of county-owned hospitals and nursing homes operated, managed, or administered by private management companies or enterprises under a lease agreement or under a contract of management in which the managing company uses its own personnel, shall not be provided state fund coverage for workers' compensation benefits under the provisions of this subchapter; and

(5) Emergency services volunteer workers duly qualified and registered as provided in § 12-75-129 when such emergency services volunteer workers are acting subject to the order, control, or pursuant to a request of, and under the supervision and instruction of the Governor, the Arkansas Department of Emergency Management, or the chief executive officer of a county or local government unit making use of emergency service volunteer workers.

(b) The term "public employer", as used in this subchapter, means:

(1) Any state agency, board, commission, department, institution, college, university, or community college receiving appropriation for regular salaries, extra help, and authorized overtime payable from funds deposited in the State Treasury or depositories other than the State Treasury by the General Assembly;

(2)(A) Any municipality of the State of Arkansas or any department, board, commission, or institution owned, operated, managed, and administered by a municipality of the State of Arkansas.

(B) Any municipal hospital or nursing home operated, managed, or administered by a private management company or enterprise, whether under a contract for management, under a lease agreement, or under any other type of management arrangement, is a private employer and not entitled to workers' compensation coverage under the provisions of this subchapter.

(C) Any unincorporated city or town shall not be deemed to be a public employer and shall not have workers' compensation liability coverage for its employees under the provisions of this subchapter;

(3)(A) Any county of the State of Arkansas or any department, board, commission, or institution owned, operated, managed, and administered by a county of the State of Arkansas.

(B) However, any county hospital or nursing home operated, managed, or administered by a private management company or enterprise, whether under a contract for management, or under a lease agreement, or under any other type of management arrangement, is a private employer and not entitled to workers' compensation coverage under the provisions of this subchapter;

(4) Any of the various school districts in the State of Arkansas; and

(5) The Arkansas Department of Emergency Management and any local government unit making use of emergency service volunteer workers.

(c) The term "reserve value", as used in this subchapter, means the present value of all payments to be made to or on behalf of any public employee claimant based upon such reasonable tables of experience and regular interest as the Director of the Public Employee Claims Division shall adopt from time to time.

(d) The term "director", as used in this subchapter, shall refer to the Director of the Public Employee Claims Division.

History. Acts 1979, No. 809, § 1; 1981, No. 929, §§ 1, 2; A.S.A. 1947, § 12-3601; Acts 1993, No. 901, § 4; 1999, No. 646, §§ 63, 64.

substituted "Arkansas Department of Emergency Management" for "State Office of Emergency Services" in (a)(5) and (b)(5).

Cross References. Workers' compensation, § 11-9-101 et seq.

Amendments. The 1999 amendment

CASE NOTES

State Employees and Officers.

An employee of the South Central Arkansas Drug Task Force was a state employee and entitled to benefits under this subchapter. South Cent. Ark. Drug Task

Force v. Ray, 56 Ark. App. 30, 937 S.W.2d 682 (1997).

Cited: Rose v. Arkansas State Police, 479 U.S. 1, 107 S. Ct. 334, 93 L. Ed. 2d 183 (1986).

21-5-604. Workfare participants excluded.

(a) A workfare participant by participating in workfare does not enter into any employment contract, expressed or implied, with the State of Arkansas or its several political subdivisions. Participation in the project is for the purpose of retaining food stamp benefits and not for employment with the State of Arkansas or its political subdivisions.

(b) The relationship of a workfare participant to the State of Arkansas or to any of its political subdivisions shall not be deemed to be an employer-employee relationship.

(c) Workfare participants shall not be considered public employees covered by the state workers' compensation funds and therefore are excluded from workers' compensation coverage under this subchapter.

History. Acts 1981, No. 916, §§ 1-3; A.S.A. 1947, §§ 12-3609 — 12-3611.

21-5-605. Public Employee Claims Division.

(a) There is created a Public Employee Claims Division within the State Insurance Department.

(b) The Director of the Public Employee Claims Division shall be appointed by the Insurance Commissioner.

(c) The division is designated as the unit of state government primarily responsible for the administration of public employee workers' compensation claims in the State of Arkansas.

(d) Upon payment of compensation to or on behalf of any public employee, the division shall notify the appropriate public employer involved.

(e)(1) The division shall determine in every claim where compensation is awarded the reserve value of such claim.

(2) Annually, on June 30 of each fiscal period, the director shall prepare a report which states the total of all reserve values established for the claims filed in that fiscal period and the total amount of moneys disbursed for payment of claims during that same period.

(3) The report shall be submitted to the Insurance Commissioner between June 30 and September 30.

(f)(1) In each case where a claim for workers' compensation benefits is made under this subchapter, the division shall investigate the claim to ensure that the compensation benefits paid are justified by the facts of the claim and the reserve values for the claim established accordingly.

(2) The division shall in all appropriate cases pursue the recovery of benefits paid to public employees from third parties pursuant to § 11-9-410.

(3)(A) The making of a claim for compensation against any public employer or the division for the injury or death of a public employee shall not affect the right of the public employee, or his dependents, to make claim or maintain an action in tort against any third party for the injury.

(B) In such event, the rights of the public employee, or his or her dependents, the public employer, and the division shall be governed by the provisions of § 11-9-410, provided, the rights of the public employer and the division in and to amounts received from the third party by the injured public employee, or his or her dependents, as a result of either settlement with or judgment against the third party shall be absolute.

History. Acts 1979, No. 809, §§ 4, 5; 1981, No. 929, § 4; 1985, No. 285, § 1; A.S.A. 1947, §§ 12-3604, 12-3605.

Publisher's Notes. Acts 1979, No. 809, § 4, provided that the Public Employee

Claims Section of the Workers' Compensation Commission, and the functions, powers, and duties relating to public employee workers' compensation claims formerly performed by the Workers' Compensation

Commission, would be transferred to the State Insurance Department by a type 1 transfer, as set forth in § 25-2-104.

21-5-606. Division attorneys.

(a) The Director of the Public Employee Claims Division shall appoint lawyers of recognized ability admitted to practice in all state courts.

(b) The lawyers shall be the attorneys for the Public Employees Claims Division and shall represent the public employer before the Workers' Compensation Commission in any claim filed pursuant to this subchapter and shall perform such other duties as the director may designate.

(c) The attorneys of any state agency, department, or institution against which a workers' compensation claim is filed by an employee may represent their respective agencies before the commission and in the courts of this state with respect to claims filed under this subchapter against their agencies, departments, or institutions, provided that the representation and defense of the state workers' compensation funds, administered by the division, shall be coordinated with the attorneys for the division and shall be under the supervision of the director.

History. Acts 1979, No. 809, § 7; 1981, No. 929, § 5; A.S.A. 1947, § 12-3607.

21-5-607. Claim, review, and appeal procedures.

To the extent not in conflict with this subchapter, the method and procedure of filing claims on behalf of the public employee and the review and appeal of compensation orders or awards of the Workers' Compensation Commission shall be the same as those provided by law and the rules and regulations of the commission, with respect to claims filed by private employers and employees.

History. Acts 1979, No. 809, § 5; 1981, No. 929, § 4; A.S.A. 1947, § 12-3605.

21-5-608. Report of injury, death, or exposure.

(a) The appropriate public employer shall file with the Public Employee Claims Division, within ten (10) days after receiving notice of any personal injury, death, or occupational disease of any public employee, a report:

(1) Showing the date, time, and place of the injury, death, or exposure;

(2) Stating briefly the circumstances and extent of the injury, death, or exposure;

(3) Stating the name of the injured or deceased person; and

(4) Stating the names of all the witnesses.

(b) The report shall be made on forms approved by the division.

History. Acts 1979, No. 809, § 6;
A.S.A. 1947, § 12-3606.

21-5-609. Benefits for emergency service volunteer workers.

(a) Benefits payable for the injury or death of persons appointed and regularly enrolled in emergency services organizations and covered by this subchapter shall be limited to the provisions of the Workers' Compensation Law, § 11-9-101 et seq. Such benefits are payable if the injury or death occurred while the person was:

(1) Actually engaged in emergency service duties, either during training or during a period of emergency; and

(2) Under the supervision and instruction and subject to the order or control of, or serving pursuant to a request of, the Governor, the Arkansas Department of Emergency Management, or the chief executive officer of a county or local government unit making use of emergency volunteer workers.

(b) The remedy provided in this section shall be the exclusive remedy as against the state and political subdivisions thereof.

(c)(1) For the purpose of workers' compensation coverage in cases of injury to or death of an individual, all duly registered and qualified emergency services volunteer workers shall be deemed local government or state employees and shall receive compensation and their survivors shall receive death benefits in the same manner as regular local government or state employees for injury or death arising out of and in the course of their activities as emergency services volunteer workers.

(2)(A) If a volunteer worker is injured or killed while subject to the order or control of a local government, compensation and benefits shall be charged against the applicable local government's experience rate and paid from the appropriate state workers' compensation fund.

(B) If the emergency services volunteer worker was under the order or control of a state agency when injured or killed, compensation and benefits shall be charged against the experience rate of the state agency which exercised order or control at the time of injury or death and paid from the appropriate state workers' compensation fund.

(d)(1) For the purpose of subsection (c) of this section, the weekly compensation benefits for emergency services volunteer workers who receive no monetary compensation for services rendered as such workers shall be calculated based upon the wages received from their regular or usual employments, the same as a regular local or state employee, with respect to injury, disability, or death.

(2) The reimbursement of twenty-five dollars (\$25.00) or less for out-of-pocket expenses incurred in response to an emergency situation such as gasoline, oil, uniforms, and required equipment, et cetera shall not be construed to be monetary compensation for the volunteer worker.

History. Acts 1979, No. 809, § 5; 1981, No. 929, § 4; A.S.A. 1947, § 12-3605; Acts 1999, No. 646, § 65. substituted “Arkansas Department of Emergency Management” for “State Office of Emergency Services” in (a)(2).

Amendments. The 1999 amendment

21-5-610. Workers’ compensation benefits in conjunction with certain other benefits.

In the event that any public employee is entitled to receive workers’ compensation benefits under the provisions of this subchapter, as a result of injury, disability, or death, and the injury, disability, or death also gives rise to an entitlement of benefits under a state or federal program or an act of Congress which provides benefits for public safety officers who serve a public agency in an official capacity, with or without compensation, as a law enforcement officer or as a firefighter or in any other capacity, the state workers’ compensation funds shall be entitled to a credit against its liability for payment of workers’ compensation benefits to the extent of the benefits received under any state or federal program or act of Congress.

History. Acts 1979, No. 809, § 5; 1981, No. 929, § 4; A.S.A. 1947, § 12-3605. held to be preempted by federal law in *Rose v. Arkansas State Police*. See case note.

Publisher’s Notes. This section was

RESEARCH REFERENCES

UALR L.J. Survey — Workers’ Compensation, 10 UALR L.J. 251.

CASE NOTES

Constitutionality. Because the Public Safety Officers’ Death Benefits Act, 42 U.S.C. § 3796 et seq., prohibits states from offsetting their death benefits against the federal payment, this section is invalid. *Rose v. Arkansas State Police*, 479 U.S. 1, 107 S. Ct. 334, 93 L. Ed. 2d 183 (1986).

SUBCHAPTER 7 — DEATH BENEFITS

- SECTION.

21-5-701. Definitions.

21-5-702. Jurisdiction of Arkansas State Claims Commission.

21-5-703. Procedures for filing claims.

21-5-704. Payment of claim to covered public employees or their survivors — Funds.
- SECTION.

21-5-705. Payment of claim to survivors of certain specified public employees killed in the line of duty — Funds.

21-5-706. Funds for payment of claims generally.

21-5-707. Children.

Cross References. Accumulated leave or vacation, § 21-4-401 et seq. and Transportation Department, § 12-8-212.

Death benefits for State Police Officers, or any police officer in the State Highway **Effective Dates.** Acts 1973, No. 150, § 2: July 1, 1973.

Acts 1987, No. 349, §§ 3, 5: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that emergency medical technicians are not currently covered by the law which provides for death benefits for survivors of law enforcement officers and firefighters. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987."

Acts 1989, No. 15, § 7: Jan. 1, 1988. Emergency clause provided: "It is hereby found and determined by the General Assembly that under current law there is no provision made for the surviving parents of a law enforcement officer injured or killed in the line of duty to be eligible for payment of claims as currently provided for, and it is the intention of the General Assembly to rectify this inequity in the law by passage of this Act. Therefore, an emergency is declared and this Act being immediately necessary to the preservation of public peace, health and safety shall be in full force from January 1, 1988."

Acts 1999, No. 630, § 5: Mar. 16, 1999.

Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that at least one dependent child of a disabled policeman who would have been entitled to scholarship benefits had application been made prior to August 31, 1997, but who was denied those benefits because the minor is just now graduating from high school; and whereas this act will allow that child to apply for the scholarship benefits provided for the children of totally disabled policemen; and whereas unless this emergency clause is adopted this act will not be in effect until after the beginning of the fall college semester. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

21-5-701. Definitions.

As used in this subchapter:

(1) "Child" or "children" means any natural child, adopted child, or stepchild who is eligible under § 21-5-707;

(2) "Covered public employee" means police officer, firefighter, state highway employee, state correction employee, Department of Community Correction employee, qualified emergency services worker, wildlife enforcement officer, emergency medical technician, State Forestry Commission employee, commissioned law enforcement personnel, or emergency response personnel of the State Parks Division of the Department of Parks and Tourism;

(3) "Department of Community Correction employee" means any employee of the Department of Community Correction who becomes subject to injury through contact with parolees, probationers, or center residents;

(4) "Emergency medical technician" means emergency medical technicians as defined in § 20-13-202;

(5) "Firefighter" means any member of a fire department or fire fighting unit of any city of the first class or second class, or any town, or any unincorporated rural area of this state, who actively engages in the

fighting of fires on either a regular or voluntary basis, or any instructor of the Arkansas Fire Training Academy, or any member of the fire fighting organization of the Camp Robinson Military Reservation or of Fort Chaffee;

(6) "Police officer" means:

(A) Any law enforcement officer engaged in official duty who is a member of any regular or auxiliary police force on a full-time or part-time basis, the Department of Arkansas State Police, or any member of the law enforcement organization of the Camp Robinson Military Reservation or of Fort Chaffee;

(B) A sheriff or deputy sheriff of any county who is engaged in official duty; or

(C) Any constable or night marshal of any town of this state engaged in official duty;

(7) "Qualified emergency services worker" means state, local, volunteer, and other emergency services workers as defined in § 12-75-103;

(8) "State correction employee" means any employee of the Department of Correction or the Department of Correction School District who becomes subject to injury through contact with inmates or parolees of the Department of Correction;

(9) "State highway employee" means any employee of the Arkansas State Highway and Transportation Department who actively engages in highway maintenance, construction, or traffic operations on the roadways and bridges of the state highway system while the roadways and bridges are open for use by the traveling public; and

(10) "Wildlife enforcement officer" means any employee of the Arkansas State Game and Fish Commission who actively engages, on a full-time or part-time basis, in the enforcement of the boating safety laws and regulations enacted for the protection of game, fish, furbearing animals, and other wildlife of the State of Arkansas.

History. Acts 1969, No. 43, § 1; 1973, No. 399, § 1; 1977, No. 812, § 1; 1977, No. 936, § 1; 1981, No. 437, § 1; 1981, No. 890, § 1; 1985, No. 839, § 2; A.S.A. 1947, § 12-2347; Acts 1987, No. 349, § 1; 1987, No. 404, § 1; 1991, No. 409, § 1; 1997, No. 547, § 1; 2001, No. 113, § 4.

Amendments. The 2001 amendment

arranged the subdivisions in alphabetical order; in (2), inserted "Department of Community Correction employee" and substituted "State" for "Arkansas" preceding "Forestry"; inserted present (3); substituted "means" for "shall mean" in present (5); and added (10).

21-5-702. Jurisdiction of Arkansas State Claims Commission.

(a) The Arkansas State Claims Commission is vested with exclusive jurisdiction of, or authority with respect to, all claims filed against the state under this subchapter.

(b) The commission shall make a determination as to whether a death or total and permanent disability was or was not in the official line of duty.

History. Acts 1969, No. 43, § 3; A.S.A. 1947, § 12-2349; Acts 1997, No. 547, § 2.

21-5-703. Procedures for filing claims.

(a) All claimants shall be subject to the same rules and regulations as are provided by the law governing procedure before the Arkansas State Claims Commission.

(b) Except as provided in subsection (d) of this section, all claims asserted under this subchapter shall be filed within five (5) years of the following:

- (1) The date of the covered public employee's death;
- (2) The date of the incident causing the covered public employee's total and permanent disability; or
- (3) The date the covered public employee permanently leaves the employment position covered by this subchapter.

(c) Unless § 6-82-504(e) is applicable, the commission shall award any scholarship benefit provided by the provisions of § 6-82-501 et seq. at the same time any death benefit or total and permanent disability benefit is awarded under this subchapter.

(d) The surviving child of any Arkansas State Highway and Transportation Department employee or law enforcement officer who died or became totally disabled as described in § 6-82-503 prior to January 1, 1997, is entitled to educational benefits under § 6-82-501, et seq., if:

- (1) The claim is filed prior to the child's twenty-first birthday;
- (2) The child would have been entitled to the benefits had the parent's death or disability occurred after August 1, 1997; and
- (3) The claim is filed within thirty (30) calendar days after March 16, 1999.

History. Acts 1969, No. 43, § 3; A.S.A. 1947, § 12-2349; Acts 1997, No. 547, § 3; 1999, No. 630, § 1.

Amendments. The 1999 amendment, in the introductory paragraph of (d), deleted "State Police employee or" following

"child of any," and inserted "Arkansas" and "or law enforcement officer"; substituted "March 16, 1999" for "August 1, 1997" in (d)(3); and made stylistic changes.

21-5-704. Payment of claim to covered public employees or their survivors — Funds.

(a)(1)(A) The state shall pay to the surviving spouse or surviving children under the age of twenty-two (22) or, if there is no surviving spouse or surviving children under the age of twenty-two (22), then to the surviving children twenty-two (22) years of age or older or to the surviving parents of any covered public employee who is killed in the official line of duty, the sum of twenty-five thousand dollars (\$25,000).

(B) In addition thereto, the municipality which employed the police officer or firefighter shall, upon certification of the amount by the police or fire department, pay to the surviving spouse or surviving children under the age of twenty-two (22) or, if there is no surviving spouse or surviving children under the age of twenty-two (22), then to

the surviving children twenty-two (22) years of age or older or to the surviving parents of the deceased police officer or firefighter an allowance for all sick leave, vacation, or other leave time accumulated to the credit of the police officer or firefighter at the time of his or her death.

(2)(A) In the event any covered public employee shall suffer any injury while engaged in the performance of official duties resulting in his or her total and permanent disability, the disabled covered public employee shall be entitled to the sum of ten thousand dollars (\$10,000) from the State of Arkansas upon establishing proof of the total and permanent disability.

(B) Proof of total and permanent disability shall be established by offering evidence that the covered public employee was unable to work in the employment position covered by this subchapter for a period of more than one (1) year or that the covered public employee received a disability rating in excess of twenty-five percent (25%) from the Workers' Compensation Commission.

(b)(1) All allowances as provided for in this section for the surviving spouse, surviving children, or surviving parents of covered public employees killed while performing official duties, or allowances provided covered public employees who are totally and permanently disabled while performing official duties, shall be paid totally from state funds appropriated therefor.

(2) The funds shall not be reimbursed by transfer or charging the funds against any state funds allocated for turnback to cities or counties or distributed to the State Highway and Transportation Department Fund or distributed to any Department of Correction fund account or any other state department agency fund account other than the Arkansas State Claims Commission fund accounts and the Miscellaneous Revolving Fund Account, or state funds levied for firefighters, police officers, employees of the Arkansas State Highway and Transportation Department, and employees of the Department of Correction for pension purposes.

(c) It is the intent of this subchapter that the total obligation of providing the benefits provided by this subchapter, even though the funds are to be administered by the Arkansas State Claims Commission, are to be defrayed from state funds and are not to be charged against, or recovered against, any turnback moneys due the cities or counties of this state or allocated to the state highway system of this state or to the Department of Correction or any other state department agency fund account other than the Arkansas State Claims Commission fund accounts and the Miscellaneous Revolving Fund Account.

History. Acts 1969, No. 43, § 2; 1973, 839, § 1; A.S.A. 1947, § 12-2348; Acts No. 150, § 1; 1973, No. 399, § 2; 1977, No. 1987, No. 349, § 2; 1989, No. 15, §§ 1, 2; 936, § 2; 1981, No. 890, § 2; 1985, No. 1989, No. 345, § 2; 1997, No. 547, § 4.

RESEARCH REFERENCES

UALR L.J. Arkansas Law Survey,
Baker, Workers' Compensation, 9 UALR
L.J. 213.

21-5-705. Payment of claim to survivors of certain specified public employees killed in the line of duty — Funds.

(a) The state shall pay the additional sum of seventy-five thousand dollars (\$75,000) to the surviving spouse or surviving children under the age of twenty-two (22) of any:

(1) Police officer, wildlife enforcement officer of the Arkansas State Game and Fish Commission, commissioned law enforcement officer or emergency response employee of the State Parks Division of the Department of Parks and Tourism, Department of Community Correction employee, or employee of the Department of Correction whose death occurred:

(A) After January 1, 2003; and

(B) Either:

(i) In the official line of duty as the result of a criminal or negligent action of another person or persons or as the result of the engagement in exceptionally hazardous duty; or

(ii) In the line of duty while the officer or employee was performing emergency medical activities; and

(2) Firefighter or employee of the Arkansas State Forestry Commission killed after July 1, 1987, while responding to, engaging in, or returning from a fire, a rescue incident, a hazardous material or bomb incident, an emergency medical activity, or simulated training thereof.

(b) In addition to the benefits provided for in subsection (a) of this section, the state shall pay the additional sum of twenty-five thousand dollars (\$25,000) to the spouse or surviving children under the age of twenty-two (22) of any police officer, wildlife enforcement officer of the Arkansas State Game and Fish Commission, commissioned law enforcement officer of the State Parks Division of the Department of Parks and Tourism, Department of Community Correction employee, or employee of the Department of Correction:

(1) Who was wearing a bulletproof vest approved by the Director of the Department of Arkansas State Police; and

(2) Whose death occurred:

(A) After July 1, 1989; and

(B) In the official line of duty as the result of a criminal action of another person or persons.

(c) The benefits shall be paid totally from state funds appropriated for these benefits. The funds shall not be reimbursed by a transfer or charging the funds against any state funds allocated for turnback to cities or counties or distributed to any other state department agency fund account other than the Arkansas State Claims Commission fund accounts and the Miscellaneous Revolving Fund Account.

(d) The additional benefits provided in this section shall be paid to the surviving spouse, surviving children, or surviving parents in three (3) equal annual payments, the first of which shall be paid in July of the next fiscal year after the date of the original order of the Arkansas State Claims Commission establishing entitlement to additional payments and annually thereafter.

(e) Determination of eligibility for the additional payments provided in this section shall be made by the Arkansas State Claims Commission in accordance with Arkansas State Claims Commission rules and procedures.

History. Acts 1969, No. 43, § 2; 1973, No. 150, § 1; 1973, No. 399, § 2; 1977, No. 936, § 2; 1981, No. 890, § 2; 1985, No. 839, § 1; A.S.A. 1947, § 12-2348; Acts 1987, No. 349, § 2; 1989, No. 15, §§ 3, 4; 1989, No. 345, § 1; 1991, No. 99, § 1; 1993, No. 809, § 1; 1993, No. 1207, § 1; 1997, No. 547, § 5; 1999, No. 57, § 1; 2001, No. 113, § 5; 2003, No. 355, § 1.

A.C.R.C. Notes. Acts 1991, No. 334, §§ 1-5, provided: "SECTION 1. The spouse or surviving children of a policeman or other law enforcement officer or fire fighter killed between March 1, 1984 and June 30, 1984, who received benefits under Subsection (c) of Section 2 of Act 839 of 1985, shall be entitled to additional benefits based on the difference between the amount received and the amount now allowed under Arkansas Code § 21-5-705(a).

"Determination for eligibility for the additional payments provided herein shall be made by the Arkansas State Claims Commission in accordance with Commission rules and procedures. The benefits shall be paid from state funds pursuant to Arkansas Code § 21-5-705.

"SECTION 2. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

"SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

"SECTION 4. All laws or parts of laws in conflict with this act are hereby repealed.

"SECTION 5. EMERGENCY. It is found and determined by the General Assembly of the State of Arkansas that the surviving spouse or surviving children of a policeman or other law enforcement officer or a fireman killed between March 1, 1984 and June 30, 1984 received lesser benefits than the spouse or surviving children of a policeman or law enforcement officer or a fire fighter killed on July 1, 1984 or thereafter; and that this inequity should be remedied immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

The reference to "subsection (c) of section 2 of Act 839" in Acts 1991, No. 334, § 1, apparently refers to subsection (c) of section 2 of Acts 1969, No. 43 (A.S.A. § 12-23-48), as amended by Acts 1985, No. 839, § 1. See § 21-5-704.

Pursuant to § 1-2-207, this section is set out above as amended by Acts 1993, No. 1207, § 1. Subsection (a) of this section was also amended by Acts 1993, No. 809, § 1, to read as follows: "The state shall pay to the surviving spouse, surviving children, or surviving parents of any police officer, wildlife enforcement officer of the Arkansas Game and Fish Commission, commissioned law enforcement officer or emergency response employee of the State Parks Division of the Department of Parks and Tourism, or employee of the Department of Correction whose death occurred in the official line of duty and was the result of a felonious criminal action of another person or persons or whose death occurred in the line of duty while the officer or employee was performing emergency medical activities and to the surviving spouse, surviving children,

or surviving parents of any firefighter killed while responding to, engaging in or returning from fighting a fire, rescue or hazardous material or bomb incident, emergency medical activity or simulated training therefor, the additional sum of seventy-five thousand dollars (\$75,000), provided the death occurs after July 1, 1987.”

Amendments. The 1999 amendment inserted “or employee of the Arkansas Forestry Commission” in (a).

The 2001 amendment rewrote (a) and (b).

The 2003 amendment substituted “specified public employees” for “certain officers” in the section heading; substituted “January 1, 2003” for “July 1, 1987” in (a)(1)(A); rewrote (a)(1)(B)(i); inserted “Arkansas” in (a)(2); and made minor stylistic changes.

RESEARCH REFERENCES

UALR L.J. Arkansas Law Survey, Baker, Workers’ Compensation, 9 UALR L.J. 213.

CASE NOTES

Cited: Brewer v. Lacefield, 301 Ark. 358, 784 S.W.2d 156 (1990).

21-5-706. Funds for payment of claims generally.

(a) All claims allowed under the provisions of this subchapter shall be paid upon award thereof by the Arkansas State Claims Commission from funds appropriated therefor.

(b) The commission may impose reasonable requirements for protecting funds paid under this subchapter to children under the age of eighteen (18), including, but not limited to, a guardianship of the estate.

History. Acts 1969, No. 43, § 4; A.S.A. 1947, § 12-2350; Acts 1997, No. 547, § 6.

21-5-707. Children.

(a) In order for a natural child to be eligible to receive benefits under this subchapter:

(1) The child must have been born prior to the date of the covered public employee’s death or total and permanent disability; or

(2) The covered public employee or the covered public employee’s spouse must have been pregnant with the child at the time of the covered public employee’s death or total and permanent disability.

(b) In order for an adopted child to be eligible to receive benefits under this subchapter:

(1) The child must have been adopted prior to the date of the covered public employee’s death or total and permanent disability; or

(2) The child’s adoption process must have begun prior to the date of the covered public employee’s death or total and permanent disability.

(c) In order for a stepchild under the age of nineteen (19) to be eligible to receive benefits under this subchapter:

(1) The stepchild must have been listed as a dependent on the covered public employee's federal and state income tax returns for each of the five (5) income years immediately prior to the date of the covered public employee's death or total and permanent disability; and

(2) The stepchild must have received more than one-half ($\frac{1}{2}$) of his or her financial support from the covered public employee in each of the five (5) income years immediately prior to the date of the covered public employee's death or total and permanent disability.

(d) In order for a stepchild nineteen (19) years of age or older to be eligible to receive benefits under this subchapter:

(1) The stepchild must have been listed as a dependent on the covered public employee's federal and state income tax returns in each of five (5) previous income years; and

(2) The stepchild must have received more than one-half ($\frac{1}{2}$) of his or her financial support from the covered public employee in each of five (5) previous income years.

History. Acts 1997, No. 547, § 7.

SUBCHAPTER 8 — ATTORNEY FEES AND COURT COSTS

SECTION.

21-5-801. Definitions.

21-5-802. Right to payment — Claims
and awards.

RESEARCH REFERENCES

Am. Jur. 52 Am. Jur. 2d, Logs, § 49 et
seq.

53A Am. Jur. 2d, Mines, §§ 33-37.
C.J.S. 58 C.J.S., Mines, §§ 138, 195.

21-5-801. Definitions.

As used in this subchapter:

(1) "State agency" means any office, department, commission, council, board, bureau, committee, institution, legislative body, or other agency of this state; and

(2) "State officer" means elected state officials and members of commissions, boards, or other governmental bodies of state agencies.

History. Acts 1987, No. 805, § 1.

RESEARCH REFERENCES

UALR L.J. Survey — Miscellaneous, 10
UALR L.J. 593.

21-5-802. Right to payment — Claims and awards.

(a) Any state officer or state employee who has been subjected to a lawsuit based on an act or omission of the officer or employee while acting within the course and scope of the office or employment and in performance of his or her other official duties shall be entitled to payment from the state for reasonable attorney fees and court costs incurred by the officer or employee in the action if:

(1) The Attorney General declined to represent the officer or employee; and

(2) The officer or employee acted without malice and in good faith.

(b) Claims for payment shall be filed with the Arkansas State Claims Commission and shall be governed by the laws pertaining to proceedings before the commission.

(c)(1) Awards made by the commission pursuant to this subchapter may be paid from the appropriation and supporting funds of the state agency from which the state officer or state employee is supported if the Chief Fiscal Officer of the State approves payment from the funds after determining that there is sufficient appropriation and funds available for paying the award.

(2) Awards not paid from the appropriation and funds of the state agency shall be paid pursuant to the laws governing payment of claims allowed by the commission.

History. Acts 1987, No. 805, § 2.

RESEARCH REFERENCES

UALR L.J. Survey — Miscellaneous, 10
UALR L.J. 593.

SUBCHAPTER 9 — CAFETERIA PLANS

SECTION.
21-5-901. Definitions.
21-5-902. Salary reduction agreement.
21-5-903. Computing retirement benefits.

SECTION.
21-5-904. Administration of cafeteria plans.

Effective Dates. Acts 2001, No. 1814, § 5: Apr. 18, 2001. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that many state and public school employees participate in benefits offered through a cafeteria plan; that many state and public school employees participate in voluntary health, disability and other insurance programs; that the Employee Benefits Division of the Department of Finance and Administration is charged with the responsibility of administering

these plans; that the existing law governing these plans is in need of clarification in order to allow the Employee Benefits Division to obtain bids for these programs at the lowest possible rates; that state and public school employees are in need of obtaining these programs at the lowest possible rates; and, that this act is necessary in order to achieve those objectives. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become ef-

fective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor

may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

21-5-901. Definitions.

As used in this subchapter:

(1) "Cafeteria plan" means a written fringe benefits plan which meets the requirements of the Internal Revenue Code;

(2) "Eligible employee" means full-time employees of governmental entities;

(3) "Governmental entities" means any agency of the state, any city, any county, any school district, or any other political subdivision of this state; and

(4) "Salary reduction agreement" means a written agreement between an eligible employee and a governmental entity whereby the employee agrees to reduce his or her salary by a stated amount or an amount equal to the employee's cost of benefits selected under a cafeteria plan.

History. Acts 1987, No. 810, § 1.

U.S. Code. The Internal Revenue

Code, referred to in this section, is codified as Title 26 of the U.S. Code.

21-5-902. Salary reduction agreement.

(a) Any eligible employee who chooses to participate in a cafeteria plan may enter into a salary reduction agreement with the governmental entity.

(b) The governmental entity is authorized, upon request of the eligible employee, to enter into a salary reduction agreement to reduce, each payday, the salary of the eligible employee by an amount of money or by the employee's cost of the selected benefits as designated by the employee.

History. Acts 1987, No. 810, § 2.

21-5-903. Computing retirement benefits.

The amount by which an eligible employee's salary is reduced pursuant to a salary reduction agreement shall continue to be included as compensation for the purpose of computing retirement benefits.

History. Acts 1987, No. 810, § 3.

21-5-904. Administration of cafeteria plans.

(a) The Executive Director of the Employee Benefits Division of the Department of Finance and Administration shall have administrative responsibility for developing, implementing, and maintaining cafeteria

plans on behalf of state employees and may promulgate necessary rules and regulations as he or she deems necessary to carry out the provision of this section.

(b)(1) This section shall not apply to separate cafeteria plans established by governmental entities prior to April 18, 2001.

(2) However, the exempt governmental entities may choose to participate in a cafeteria plan established pursuant to this section.

(c) The Arkansas State Police Employee Health Plan shall be exempt from any mandatory participation required by this section.

History. Acts 1989, No. 389, § 1; 2001, No. 1814, §§ 3, 4.

Amendments. The 2001 amendment, in (a), added “Executive Director of the Employee Benefits Division of the” in the

first sentence, substituted “on behalf of state employees and may” for “The Chief Fiscal Officer of the State shall” and made gender neutral changes; and added (b) and (c).

SUBCHAPTER 10 — EMPLOYEE PERFORMANCE EVALUATION

SECTION.

- 21-5-1001. Legislative intent.
- 21-5-1002. Performance evaluation categories.
- 21-5-1003. Performance evaluation process.

SECTION.

- 21-5-1004 — 21-5-1006. [Repealed.]
- 21-5-1007. Annual leave.

Effective Dates. Acts 1997, No. 899, § 11: March 27, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that a substantial number of state employees are eligible for salary increases on July 1, 1997; that this act prescribes the procedure to be followed in awarding salary increases to classified state employees; and that unless this emergency clause is adopted the procedures prescribed herein will not be in effect until after July 1, 1997. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the

period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2001, No. 1461, § 14: July 1, 2001. Emergency clause provided: “It is found and determined by the General Assembly that several position changes have been incorporated into agencies’ budgets to begin July 1, 2001 and that changes to the Uniform Classification and Compensation Act must also take effect at that time to prevent confusion and uncertainty. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2001.”

21-5-1001. Legislative intent.

(a) It is the intent of the General Assembly that each state agency, board, commission, and institution of higher education evaluate the performance of its employees annually.

(b) Employees shall be evaluated using an instrument approved by the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration.

History. Acts 1997, No. 899, § 1; 2001, No. 1461, § 8.

Amendments. The 2001 amendment, in (b), inserted “shall be” following “Employees” and deleted “who exceed stan-

dards in the performance of their duties shall be eligible for incentive pay awards” following “Administration”; and deleted (c).

21-5-1002. Performance evaluation categories.

There are established the following uniform performance evaluation categories for use in determining incentive pay award eligibility. As used in this subchapter:

(1) “Unsatisfactory” means an overall performance of duties that is consistently unacceptable in quality, accuracy, and timeliness;

(2) “Satisfactory” means an overall evaluation which demonstrates competency in the performance of the duties and responsibilities of the job;

(3) “Above average” means an overall evaluation which demonstrates performance of the duties and responsibilities of the job at a level which is above the satisfactory level of performance; and

(4) “Exceeds standards” means an overall evaluation which demonstrates performance of the duties and responsibilities of the job at a level exceeding that of a satisfactory evaluation.

History. Acts 1997, No. 899, § 2; 2001, No. 1461, § 9; 2003 (1st Ex. Sess.), No. 22, § 5.

Amendments. The 2001 amendment redesignated the former (a) as the present introductory language and deleted (b).

The 2003 (1st Ex. Sess.) amendment added (3); redesignated former (3) as present (4); and, in present (4), inserted “and productivity” and substituted “an above average” for “a satisfactory.”

21-5-1003. Performance evaluation process.

(a) Any agency, board, commission, or institution of higher education may revise or develop an evaluation process suited to the mission of the agency, board, commission, or institution, provided:

(1) The evaluation process identifies performance which is “unsatisfactory”, “satisfactory”, “above average”, and “exceeds standards”; and

(2) The evaluation system complies with the guidelines established by the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration.

(b) The agency, board, commission, or institution may implement the performance evaluation system upon approval by the office after review by the Legislative Council.

History. Acts 1997, No. 899, § 3; 2003 (1st Ex. Sess.), No. 22, § 6.

Amendments. The 2003 (1st Ex. Sess.)

amendment inserted “above average” in (a)(1); and inserted “upon approval by the Office of Personnel Management” in (b).

21-5-1004 — 21-5-1006. [Repealed.]

Publisher's Notes. These sections, concerning annual evaluation, amount of incentive pay award, and analysis of current system, were repealed by Acts 2001, No. 1461, § 10. The sections were derived from the following sources:

21-5-1004. Acts 1997, No. 899, § 4.
21-5-1005. Acts 1997, No. 899, § 5.
21-5-1006. Acts 1997, No. 899, § 6.

21-5-1007. Annual leave.

- (a) When an officer or employee of a state office or agency excluded from the provisions of the Uniform Attendance and Leave Policy Act, § 21-4-201 et seq., by the definition of “state agencies” in § 21-4-203 leaves employment of the excluded office or agency and becomes employed by an agency or institution which is subject to the Uniform Attendance and Leave Policy Act, § 21-4-201 et seq., the period of employment with the excluded office or agency shall be included as state employee service for the purpose of determining the rate at which the employee earns paid annual leave.
- (b) The provisions of this section shall be applied in computing annual leave earned after March 27, 1997.

History. Acts 1997, No. 899, § 7.

SUBCHAPTER 11 — CAREER LADDER INCENTIVE PROGRAM

SECTION.

21-5-1101. Competency-based promotions and salary adjustments.

Effective Dates. Acts 1999, No. 1061, § 6: July 1, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that the Constitution of the State of Arkansas requires the General Assembly to develop a career ladder incentive program which will allow for the development of a competency based pay program for employees of state agencies and institutions of higher education. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999.”

Acts 2001, No. 1461, § 14: July 1, 2001. Emergency clause provided: “It is found and determined by the General Assembly that several position changes have been incorporated into agencies’ budgets to begin July 1, 2001 and that changes to the Uniform Classification and Compensation Act must also take effect at that time to prevent confusion and uncertainty. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2001.”

21-5-1101. Competency-based promotions and salary adjustments.

(a) The Department of Finance and Administration is authorized to develop and implement a career ladder incentive program for employees of all state agencies, boards, commissions, and institutions of higher education covered by the Uniform Classification and Compensation Act, § 21-5-201 et seq.

(b)(1) For the purpose of this subchapter, a “career ladder incentive program” means a competency-based pay system which incorporates pay and performance standards and establishes criteria for competency-based promotions and salary adjustments for employees who exhibit effective performance and support the key agency or institution’s goals and objectives.

(2) “Career ladder classification series” means a cluster of hierarchical classes with similar duties and functions that is grouped for professional promotion purposes.

(c) At the end of each fiscal year, the Chief Fiscal Officer of the State shall determine the percentage amount not to exceed eight percent (8%) for bonus payments that may be awarded to employees who satisfy competency-based criteria developed by agencies and institutions and approved by the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration after review by the Legislative Council.

(d)(1) The payments shall be awarded as a lump-sum payment, and the payment shall not be construed as exceeding the maximum salary.

(2) The lump-sum payments in this section shall not be considered as salary for the purposes of retirement eligibility.

(e) Management or supervisory personnel who fail to complete an annual evaluation of employees under their administrative control shall not be eligible for promotion or salary adjustment bonus payments themselves.

History. Acts 1999, No. 1061, § 1; 2001, No. 1461, § 12; 2003 (1st Ex. Sess.), No. 22, § 4.

A.C.R.C. Notes. Acts 2003, No. 1013, § 13 provided: “PERFORMANCE REWARDS. The Director of the Bureau of Legislative Research may implement a program to reward employees of the bureau for exceptional service similar to the state Career Ladder Incentive Plan bonus program authorized by Arkansas Code 21-5-1101. The plan shall be approved by the Legislative Council prior to its implementation. The provisions of this section shall be in effect only from July 1, 2003 through June 30, 2005.”

Publisher’s Notes. Acts 1999, No. 1061, § 2, provided: “The Department of Finance and Administration is authorized

to promulgate rules and regulations necessary for the implementation of the career ladder incentive program and shall report the rules and regulations to the Arkansas Legislative Council no later than December 31, 1999. For purposes of establishing such rules and regulations, the Governor shall appoint a Career Ladder Incentive Program Task Force, representative of all boards, commissions, state agencies and institutions of higher education to provide technical assistance to the Office of Personnel Management. Following approval by the Arkansas Legislative Council, the Department of Finance and Administration may begin a phased implementation of the program during the remainder of the 1999-2001 biennium. All reclassification of positions related to the

implementation of the career ladder incentive program by any agency, board, commission, or institution of higher education must be approved by the Office of Personnel Management after receiving prior approval of the Arkansas Legislative Council or Joint Budget Committee. The Office of Personnel Management shall report at least quarterly during the biennium regarding its progress and agency institution involvement in the career ladder incentive program. The requirement

of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court jurisdiction, this entire section is void."

Amendments. The 2001 amendment added (c) through (g).

The 2003 (1st Ex. Sess.) amendment rewrote present (c).

CHAPTER 6

FEES

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. STATE OFFICERS.
3. COUNTY OFFICERS.
4. OFFICERS OF THE COURT.
5. MISCELLANEOUS FEES.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 21-6-101. Fees in certain sections superseded.
- 21-6-102. Posting of fees.

SECTION.

- 21-6-103. Illegal fees — Penalty.
- 21-6-104. Fees in absence of fixed fee.
- 21-6-105. Computation of fees.

Effective Dates. Acts Dec. 23, 1842, § 35, p. 27; Jan. 1, 1843.

Acts 1977, No. 333, § 6: Mar. 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the establishment of uniform advance fees to be charged for causes of action by the clerks in the various circuit and chancery courts of this State is necessary to provide for the efficient operation of said offices and to minimize the necessity of maintaining separate accounts for various fees; that the fees charged by

county recorders are not now adequate to reimburse the county for the service of recording instruments, and that the immediate passage of this Act is necessary to promote the efficient administration of justice in this State and to enable counties to recover reasonable fees for services rendered by recorders. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

21-6-101. Fees in certain sections superseded.

The appropriate fee prescribed in §§ 21-6-306, 21-6-402, and 21-6-403 shall be in lieu of the fee prescribed in:

- (1) § 18-44-117 for filing mechanics' and materialmen's liens;
- (2) § 18-46-115 for filing medical, nursing, and hospital liens;

(3) § 16-65-117 for filing judgments to establish judgment liens on lands; and

(4) § 17-90-303 for recording licenses of optometrists.

History. Acts 1977, No. 333, § 4;
A.S.A. 1947, § 12-1720.2.

21-6-102. Posting of fees.

Every officer to whom fees are allowed by law shall cause to be set up in some conspicuous place in his or her office and there constantly keep a fair list or table of his or her fees. In case of default, any such officer shall forfeit all the fees pertaining to his or her office so long as he or she shall neglect to set up and keep up the list or table of fees.

History. Acts Dec. 23, 1842, § 26, p. 27; C. & M. Dig., § 4626; Pope's Dig., § 5715; A.S.A. 1947, § 12-1737.

CASE NOTES

ANALYSIS

Construction.
Applicability.

Construction.

This section is highly penal and must be strictly construed. *Sebastian Bridge Dist. v. Lynch*, 200 Ark. 134, 138 S.W.2d 81 (1940).

Applicability.

This section is not applicable to an official who is not paid fees for his services but is paid a fixed salary for all purposes, though fees are collected for benefit of the county which pays his salary. *Sebastian Bridge Dist. v. Lynch*, 200 Ark. 134, 138 S.W.2d 81 (1940).

21-6-103. Illegal fees — Penalty.

If any officer shall charge, demand, or receive any more or greater fees for his or her services than are allowed by law, or shall demand, charge, or receive any such fees without having performed the services for which the fees are charged, the officer for every offense shall forfeit to the injured party, or the party against whom the fees may be charged, the amount of fees illegally charged, and five dollars (\$5.00) for each item illegally demanded, charged, or received, with cost, and shall also be subject to an indictment for extortion.

History. Acts Dec. 23, 1842, § 35, p. 27; C. & M. Dig., §§ 2810, 4632; Pope's Dig., §§ 3528, 5721; A.S.A. 1947, § 12-1738.

Publisher's Notes. This section may

be partially superseded, as it relates to notaries public, by § 21-6-309(b).

Cross References. Soliciting unlawful compensation, § 5-52-104.

RESEARCH REFERENCES

Ark. L. Rev. Official Misconduct under the Arkansas Criminal Code, 30 Ark. L. Rev. 160.

CASE NOTES

ANALYSIS

Construction.

Applicability.

Extortion.

—Defined.

—Proof of intent.

—Sufficiency of indictment.

Setoff.

Construction.

This section is highly penal and must be strictly construed. *Sebastian Bridge Dist. v. Lynch*, 200 Ark. 134, 138 S.W.2d 81 (1940); *McCourtney v. Morrow*, 216 Ark. 959, 229 S.W.2d 124 (1950).

This section must be given the same construction in civil cases as in criminal cases. *McCourtney v. Morrow*, 216 Ark. 959, 229 S.W.2d 124 (1950).

Applicability.

This section has no application to an action by a county against the circuit clerk to set aside judgments allowing claims for services and warrants issued pursuant thereto. *Johnson County v. Bost*, 139 Ark. 35, 213 S.W. 388 (1919).

This section is not applicable to an official who is not paid fees for his services but is paid a fixed salary for all purposes, though fees are collected for benefit of the county which pays his salary. *Sebastian Bridge Dist. v. Lynch*, 200 Ark. 134, 138 S.W.2d 81 (1940).

Extortion.

—Defined.

Extortion, as defined in this section, embraces only state, county, and township

officers and does not relate to or include road commissioners. *Hood v. State*, 156 Ark. 92, 245 S.W. 176 (1922).

—Proof of Intent.

If an officer takes a fee not authorized by law under the belief that he is by law entitled to it and without any corrupt intent in the matter, he is not guilty of extortion. *Leeman v. State*, 35 Ark. 438 (1880).

As a prerequisite to liability, there must be a finding of fact that officer acted corruptly with bad motive or evil intent. *McCourtney v. Morrow*, 216 Ark. 959, 229 S.W.2d 124 (1950).

—Sufficiency of Indictment.

It is sufficient averment of a corrupt intent in an indictment for extortion to allege that the defendant "extorsively" took the unlawful fee. *Leeman v. State*, 35 Ark. 438 (1880).

An indictment of a road commissioner of a road improvement district for extortion in receiving money for services not performed was fatally defective in failing to allege that the money was received corruptly and under color of office. *Hood v. State*, 156 Ark. 92, 245 S.W. 176 (1922).

Setoff.

An officer proceeded against under this section cannot set off illegal charges against omitted legal charges, nor avoid the penalty by tendering overcharge before action is commenced. *Turner v. Blount*, 49 Ark. 361, 5 S.W. 589 (1887).

21-6-104. Fees in absence of fixed fee.

In all cases where any officer or other person is required to perform any duty for which no fees are allowed by any law, he or she shall be entitled to receive such pay as would be allowed for similar services.

History. Acts Dec. 23, 1842, § 24, p. 27; C. & M. Dig., § 4624; Pope's Dig., § 5713; A.S.A. 1947, § 12-1735.

Cross References. Constructive fees not allowed, § 14-23-108.

CASE NOTES

ANALYSIS

Common law.

Statutory authority required.

Common Law.

The right to recover costs did not exist at common law. *Jackson v. Lofton*, 102 Ark. 144, 143 S.W. 895 (1912).

Statutory Authority Required.

An officer is not entitled to fees for every specific act done by him officially; rather, can only collect where the law makes provision to pay him. *Crittenden County v. Crump*, 25 Ark. 235 (1868).

Where the compensation of an officer is regulated by fees, he can only demand those authorized by law and cannot charge for a particular service for which no special fee is provided, unless there is a general provision of law covering all services not specially provided for; such a general provision would not embrace services for the state or a county, unless they are expressly named or necessarily im-

plied. *Standford v. Wheeler*, 28 Ark. 144 (1873); *Cole v. White County*, 32 Ark. 45 (1877).

The county court is absolutely prohibited from allowing to any officer any fee or allowance not specifically allowed the officer by law, nor can it allow any officer constructive fees. *Trimble v. St. Louis & S.F. Ry.*, 56 Ark. 249, 19 S.W. 839 (1892); *Logan County v. Trimm*, 57 Ark. 487, 22 S.W. 164 (1893).

To authorize a county court to allow a claim of fees for services rendered by an officer, three things must concur: (1) There must be a specific statutory authority to the officer to make a charge for the service; (2) The officer must be required by the statute, or by the rules of practice or order of the court, to perform the service; and (3) The statute must indicate, expressly or by fair intendment, the intention to permit the fee allowed by the statute for the service to be charged against the county. *Logan County v. Trimm*, 57 Ark. 487, 22 S.W. 164 (1893).

21-6-105. Computation of fees.

In all cases where fees are allowed by law according to the number of words, each figure shall be counted as one (1) word.

History. Acts Dec. 23, 1842, § 23, p. 27; C. & M. Dig., § 4623; Pope's Dig., § 5712; A.S.A. 1947, § 12-1734.

SUBCHAPTER 2 — STATE OFFICERS

SECTION.

21-6-201. Auditor of State.

21-6-202. Secretary of State.

SECTION.

21-6-203. Commissioner of State Lands.

Effective Dates. Acts 1875, No. 77, § 53: effective on passage.

Acts 1881, No. 40, § 3: effective on passage.

Acts 1927, No. 197, § 2: effective on passage.

Acts 1983, No. 886, § 6: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more

than a two (2) year period; that the effectiveness of this Act on July 1, 1983 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1983 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being

necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1983.”

Acts 1985, No. 318, § 2: July 1, 1985. Emergency clause provided: “It is hereby found and determined by the Seventy-Fifth General Assembly of the State of Arkansas that this Act is essential to the efficient operation of the State Land Department and any delay in the implementation of this Act will seriously hamper the efficient operation of the State Land Department. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of public peace and safety shall be in full force and effect from and after July 1, 1985.”

Acts 2001, No. 423, § 2: July 1, 2001. Emergency clause provided: “It is hereby found and determined by the Eighty-third General Assembly that the effective date of this act shall be July 1, 2001, in that the fiscal year for all state agencies begins on July 1; that for purposes of accounting and record keeping it is necessary that the changes made by this act to the collection of fees by the Commissioner of State Lands be implemented on a date corresponding with the start of the fiscal year. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2001.”

21-6-201. Auditor of State.

The following fee shall be paid into the State Treasury for services performed by the Auditor of State:

For each certified transcript from the Auditor of State, to be paid by the person who shall desire the same \$ 1.00

History. Acts 1875, No. 77, § 2, p. 167; C. & M. Dig., § 4569; Pope’s Dig., § 5653; A.S.A. 1947, § 12-1702.

21-6-202. Secretary of State.

(a) The following fees shall be allowed for services performed by the Secretary of State and paid into the State Treasury in the same manner that all other fees are or shall be directed to be paid:

- (1) For affixing the Great Seal of the State, or the Seal of the Secretary of State to any instrument \$ 5.00
- (2) For every commission issued to a citizen of another state or apostilles 10.00
- (3) For every commission issued to a state officer other than prosecuting attorneys 15.00
- (4) For every commission issued to prosecuting attorneys 15.00
- (5) For every commission issued to a sheriff, collector, clerk, county judge, treasurer, assessor, coroner, or surveyor 10.00
- (6) For every commission issued to any other county officer or justice of the peace other than members of the General Assembly 5.00
- (7) For all copies of records or other written or printed files in the office of the Secretary of State, and for recording, for every page80

(8) For all copies of maps, profiles, or other files of a similar nature, such fee as may be established by the Secretary of State, to be determined with reference to the amount of clerical labor and stationery required to make such copies, at the rate of not less than one dollar (\$1.00) per hour for the time employed in making the copies.

(b) All fees specified in this section shall be paid at the time the commission, certificate, instrument, or copy is delivered.

History. Acts 1875, No. 77, § 1, p. 167; Dig., § 5652; Acts 1957, No. 340, § 1; 1881, No. 40, § 1, p. 73; C. & M. Dig., A.S.A. 1947, § 12-1701; Acts 1989, No. § 4568; Acts 1927, No. 197, § 1; Pope's 285, § 1.

CASE NOTES

State Officers' Commissions. sion issued to a state officer. *Chism v. Martin*, 57 Ark. 83, 20 S.W. 809 (1892).
A special judge of the Supreme Court is not required to pay the fee for a commis-

21-6-203. Commissioner of State Lands.

(a) The following fees shall be charged and collected by the Commissioner of State Lands:

- (1) Emerged Land Deeds issued pursuant to §§ 22-5-404, 22-5-405 \$ 5.00
- (2) Deeds to 16th section school lands under § 22-5-407 5.00
- (3) Quitclaim deed of mineral interest under § 22-6-502 5.00
- (4) Issuance of duplicate deeds and patents under § 22-6-104 5.00
- (5) Issuance of original patents under § 22-6-105 5.00
- (6) Redemption deeds issued under § 26-37-310 5.00
- (7) Issuance of sale deeds 5.00
- (8) Double entry statements 3.00
- (9) Disclaimers 3.00
- (10) For each page of field notes issued by the office of the Commissioner of State Lands50
- (11) A fee of five dollars (\$5.00) plus actual cost for each Government Land Office plat copied and distributed.

(b) The Commissioner of State Lands shall charge a collection fee of twenty-five dollars (\$25.00) against all tax delinquent land redeemed or sold by the Commissioner of State Lands, except the fees charged for the redemption of severed mineral interests shall not include the twenty-five-dollar collection fee.

(c) For each certificate of donation to forfeited lands issued by the Commissioner of State Lands, there shall be paid a fee of ten dollars (\$10.00).

(d) For each donation deed issued by the Commissioner of State Lands, there shall be paid a fee of one dollar (\$1.00).

(e) All fees and charges collected by the Commissioner of State Lands shall be deposited in a financial institution in the state.

History. Acts 1883, No. 117, §§ 1, 2, p. 295; C. & M. Dig., § 4570; Pope's Dig., § 5654; Acts 1983, No. 886, §§ 1, 3; 1985, No. 318, § 1; A.S.A. 1947, §§ 10-114, 10-115, 12-1704, 12-1705; Acts 2001, No. 423, § 1.

Amendments. The 2001 amendment substituted "office of the Commissioner of State Lands" for "Office of the State Land Commissioner" in (a)(10); in (b), substituted "The commissioner shall" for "The Commissioner shall," substituted "collection fee of twenty-five (\$25.00) dollars" for

"twenty-five dollar (\$25.00) collection fee," deleted "which has been transferred to the Commissioner of State Lands" following "delinquent land," and inserted the present language following "delinquent land"; substituted "commissioner" for "Commissioner of State Lands" in (c), (d), and (e); substituted "a fee" for "into the State Treasury the sum" in (c) and (d); and substituted "a financial institution in the state" for "the State Treasury to the credit of the Constitutional Officers Fund" in (e).

SUBCHAPTER 3 — COUNTY OFFICERS

SECTION.

- 21-6-301. Fees not basis for compensation.
 21-6-302. County treasurers.
 21-6-303. County surveyors.
 21-6-304. Coroners.
 21-6-305. Collector of revenue.
 21-6-306. Recorders.

SECTION.

- 21-6-307. Sheriffs.
 21-6-308. Constables.
 21-6-309. Notaries public.
 21-6-310. Officers and employees generally — Disposition of funds.

Effective Dates. Acts 1875, No. 77, § 53: effective on passage.

Acts 1875 (Adj. Sess.), No. 58, § 15: effective on passage.

Acts 1883, No. 114, § 226: effective on passage.

Acts 1885, No. 97, § 2: effective on passage.

Acts 1885, No. 98, § 3: effective on passage.

Acts 1899, No. 190, § 2: effective on passage.

Acts 1903, No. 32, § 2: effective on passage.

Acts 1921, No. 224, § 3: approved Mar. 3, 1921. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared, and this act shall take effect and be in full force from and after its passage."

Acts 1923, No. 142, § 3: effective on passage.

Acts 1929, No. 95, § 2: effective on passage.

Acts 1941, No. 78, § 2: approved Feb. 20, 1941. Emergency clause provided: "Whereas, the uncertainty of the law governing county treasurers' fees in this State is causing great confusion in our county governments and is endangering

the public peace and safety, an emergency is therefore declared and this act shall take effect and be in force from and after its passage."

Acts 1941, No. 120, § 2: approved Mar. 6, 1941. Emergency clause provided: "It is hereby determined that on account of reduced assessed valuation and other reasons, additional compensation to collectors is necessary for proper enforcement of the law and collection of taxes; therefore an emergency exists and this act being necessary for the public peace, health and safety shall be in force and effect from and after its passage."

Acts 1943, No. 31, § 3: approved Feb. 10, 1943. Emergency clause provided: "It is hereby determined that on account of reduced assessed valuation and other reasons, additional compensation to collectors is necessary for proper enforcement of the law and collection of taxes, therefore, an emergency exists and this act being necessary for the public peace, health and safety shall be in force and effect from and after its passage."

Acts 1945, No. 55, § 3: Feb. 16, 1945. Emergency clause provided: "All laws and parts of laws in conflict herewith are hereby repealed, and because of the confusion and uncertainty existing in the

various counties throughout the State under the present laws relative to the legal fees entitled to be charged by the Circuit and Chancery Clerks and Recorders in this State for the services they render, an emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage and approval."

Acts 1945, No. 271, § 3: effective on passage.

Acts 1947, No. 201, § 3: Mar. 7, 1947. Emergency clause provided: "Whereas, the present fees now being paid to county surveyors are inadequate:

"Now, Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1947, No. 221, § 4: Mar. 18, 1947. Emergency clause provided: "Whereas, the fees now being paid to justices of the peace and constables of this State are totally inadequate to compensate them for the services rendered; now, therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1949, No. 348, § 3: approved Mar. 21, 1949. Emergency clause provided: "It is hereby ascertained that the commissions payable to the Collector are inadequate due to the increased cost of living and that a great hardship is being imposed; it being further ascertained that adequate compensation is necessary for the carrying on of county government and this Act being necessary for the preservation of the public peace, health and safety of the inhabitants of the State of Arkansas, an emergency is hereby declared to exist and this Act shall be in full force and effect from and after its passage."

Acts 1963, No. 124, § 2: Feb. 28, 1963. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fee presently provided for recorders for recording, indexing and cross-indexing instruments of writing is not adequate to compensate such recorders and in fact is working a severe hardship on the recorders in the various counties and that this act is immediately necessary to correct the situation. Therefore, an emergency is hereby declared to

exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1973, No. 141, § 2: Jan. 1, 1974.

Acts 1975, No. 127, § 7: Feb. 7, 1975. Emergency clause provided: "It has been found and determined by the General Assembly that the adoption of Amendment No. 55 to the Constitution requires legislation to implement immediately Section 5 of said Amendment; that standards for the payment of compensation of county officers and employees are required; and that requirements for receipt and deposit of fees, fines, and penalties consistent with said Amendment are required. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 333, § 6: Mar. 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the establishment of uniform advance fees to be charged for causes of action by the clerks in the various circuit and chancery courts of this State is necessary to provide for the efficient operation of said offices and to minimize the necessity of maintaining separate accounts for various fees; that the fees charged by county recorders are not now adequate to reimburse the county for the service of recording instruments, and that the immediate passage of this Act is necessary to promote the efficient administration of justice in this State and to enable counties to recover reasonable fees for services rendered by recorders. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 399, § 3: approved Mar. 10, 1977. Emergency clause provided: "Whereas, the operations of industries and inflationary activities have caused a great increase in wages and a great influx into this State, which has resulted in a congestion of population in many areas, which congestion has brought about more lawlessness and has necessitated a great deal of additional expense and work by the several Sheriffs of this State, an emer-

gency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, the same shall take effect and be in full force and effect after its passage.”

Acts 1985, No. 558, § 4: Mar. 25, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that the present law is not clear with regard to the right of a county treasurer to receive a commission on public school funds handled by him for a district which is not administered in his county; that in some counties of the State both the county treasurer in which school funds are collected and the county treasurer of the county in which the district is administered are taking a full commission on such school funds; that the county treasurer of the county in which funds are collected but in which the school district is not administered actually performs very little service to the district; that to allow treasurers of two counties to take a commission on any particular public school funds places an unfair burden on such funds and on the districts for which such funds are collected; that it is the purpose and intent of this Act to clarify the law to assure that in the case of a school district located in two or more counties, only the county treasurer of the county in which the district is administered is entitled to a commission on the funds of such district and that this Act should be given effect at the earliest possible date to avoid this inequity. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1989, No. 304, § 6: Mar. 2, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that the fees currently prescribed by law to be charged by notaries for their services are outdated and are not sufficient to compensate notaries public for their services; that the current laws relating to notaries public do not require applicants for a notary commission to post a bond to assure that they perform their duties as a notary in accordance with law; that this act is designed to increase fees for notary services and to require notaries to file a bond at the time of making appli-

cation for a notary commission and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1989, No. 534, § 10: Mar. 14, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that the fees currently charged for filing and recording instruments for initiation of actions in the circuit and chancery courts and for other official functions of the circuit and chancery courts are inadequate and should be increased immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1999, No. 108, § 5: Feb. 17, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that there is a lack of modern computerized accounting equipment and software in county treasurers’ offices across the state. It is further determined by the Arkansas General Assembly that this lack of automation could impede the smooth operation of county finances in those counties without such equipment and software. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 2001, No. 1215, § 2: March 30, 2001. Emergency clause provided: “It is found and determined by the General Assembly that due to the passage of Amendment 79 to the Constitution of Arkansas it is vital that the county collectors have the means to establish an automation system to ensure efficient and accurate records are kept by the county collector. Therefore, an emergency is declared to exist and this act being immediately necessary for

the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1275, § 4: Apr. 4, 2001. Emergency clause provided: "It is found and determined by the General Assembly that property tax reimbursements to the counties will most likely begin in April and it is critical to the counties to account

for costs borne by the certification of amounts of real property tax reduction to the Chief Fiscal Officer of the State as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

21-6-301. Fees not basis for compensation.

(a) Fees of the office shall not be the basis of compensation for officers or employees of county offices.

(b) All compensation, including salary, hourly compensation, expense allowances, and other remunerations allowed to any county officer or employee shall be made only on specific appropriation by the quorum court of the county. The quorum court shall make those appropriations required by law.

(c) All expense allowances and remunerations other than salary allowed to any county officer or employee by law shall be paid only for actual expenses incurred in the official performance of duties as attested by vouchers certified by the county officer or employee and by such other evidence as may be required.

History. Acts 1975, No. 127, §§ 1, 3, 4; A.S.A. 1947, §§ 12-1740, 12-1742, 12-1743.

CASE NOTES

ANALYSIS

In general.

Construction with other laws.

County officers.

In General.

Acts 1941, No. 342, provided that county delinquent tax collectors were to be paid from the fees they collected in their official capacity, but Acts 1975, No. 127, codified in this section as enabling legislation to Ark. Const. Amend. No. 55, provides that no county officers or employees shall be compensated through such a

system; thus, Act 342 and Act 127 were plainly in direct conflict and the chancellor was correct in finding that Act 127 impliedly repealed Act 342. *Bahil v. Scribner*, 265 Ark. 834, 581 S.W.2d 334 (1979).

Construction with Other Laws.

This section repealed Acts 1941, No. 342. *Bahil v. Scribner*, 265 Ark. 834, 581 S.W.2d 334 (1979).

County Officers.

Defendants were county officers or employees where the defendants conducted

their operations out of the county courthouse, the county supplied their office space and utilities, their bonds were payable to the county, the county paid the employer's part of their Social Security

payments, and the county paid the employer's part of their state retirement payments. *Bahil v. Scribner*, 265 Ark. 834, 581 S.W.2d 334 (1979).

21-6-302. County treasurers.

(a) Unless otherwise provided by §§ 6-13-701, 6-17-908, 6-20-221, 14-90-913, and 21-6-104, the county treasurers shall be required to collect, as treasurer's commission, two percent (2%) on all funds coming into their hands as treasurers and to be paid out of the respective funds.

(b) All commissions collected under this section shall be paid into the county treasury to the credit of the county treasurer's commission fund.

(c) All moneys collected by the treasurer as commissions shall be used by the treasurer to offset administrative costs.

(d)(1) The treasurer may set aside up to ten percent (10%) of the gross commissions collected annually to be credited to the county treasurer's automation fund to be used:

(A) To operate the office of the county treasurer;

(B) For administrative costs; and

(C) To purchase, maintain, and operate an automated accounting and record-keeping system.

(2) The acquisition and update of software for the automated accounting and record-keeping system shall be permitted uses of these funds.

(3) Moneys deposited in this fund may accumulate and shall be appropriated and expended for the uses designated in this section by the quorum court at the direction of the treasurer.

(e)(1) The treasurer shall receive no commission for the handling of revolving loan, equalizing, and vocational education funds, proceeds of school bond sales, money collected from insurance on losses, and all nonrevenue receipts.

(2) As used in this subsection, "nonrevenue receipts" means reimbursement of all or a part of a payment made by the county.

(f) In the case of funds of a school district composed of area in two (2) or more counties, only the county treasurer of the county in which the district is administered shall be allowed a commission on such funds.

History. Acts 1941, No. 78, § 1; 1985, No. 558, § 2; A.S.A. 1947, § 12-1728; Acts 1991, No. 257, § 1; 1999, No. 108, § 1; 2003, No. 844, § 1.

Amendments. The 1999 amendment, in (a), inserted "by §§ 6-13-701, 6-17-908, 6-20-221, 14-90-913, and 21-6-104" and substituted "required to collect, as trea-

surer's commission," for "allowed, as fees,;" added (b) through (d); redesignated former (b) and (c) as present (e) and (f); and inserted "school" in (e)(1).

The 2003 amendment inserted present (d)(1)(A) and (d)(1)(B); and inserted the (d)(1)(C) designation.

CASE NOTES

ANALYSIS

Purpose.
Construction with other laws.
Funds excluded.
Proportionate contribution from funds.
Sale of bonds.

Purpose.

This section does not purport to be a salary act or other compensatory act for county treasurers, but it was intended to create a source of revenue accruing to that office from which the salary of the incumbent could be paid. *Howard v. Stafford*, 203 Ark. 736, 158 S.W.2d 929 (1942).

Construction with Other Laws.

This section repealed Acts 1939, No. 146, but not any other act, either legislative or initiative, fixing the salaries of county treasurers. *Howard v. Stafford*, 203 Ark. 736, 158 S.W.2d 929 (1942).

Funds Excluded.

This section contemplated the allowance of fees on all county revenue but not

upon funds belonging to a drainage district. *Honey v. Greene County*, 102 Ark. 106, 143 S.W. 592 (1912) (decision under prior law).

Proportionate Contribution from Funds.

The county treasurer's salary is fixed in amount by the total of the county funds coming into his hands, but in the settlement of the salary each fund contributes its own proportion and pays in its own kind. *Hodges v. Prairie County*, 80 Ark. 62, 95 S.W. 988 (1906) (decision under prior law).

Sale of Bonds.

The county treasurer is not entitled to a commission on sales of bonds of a drainage district. *Fuller v. State*, 112 Ark. 91, 164 S.W. 770 (1914) (decision under prior law).

21-6-303. County surveyors.

County surveyors shall be allowed the following fees:

- (1) For each day he or she may be engaged, either under an order of the county court, or otherwise, not to exceed \$50.00
- (2) For each mile traveled from the place of residence to a place where the service is to be made and return 12
- (3) For calculating the amount of land in each tract or division and making the plat, a fee of not to exceed three dollars (\$3.00) per hour devoted in the preparation thereof, but in no event less than 1.00
- (4) For recording plat and certificate 50
- (5) For every copy of plat and certificate 50

History. Acts 1875, No. 77, § 29, p. 167; 1875 (Adj. Sess.), No. 58, § 10, p. 103; C. & M. Dig., § 4596; Acts 1921, No. 224, § 1; 1929, No. 95, § 1; Pope's Dig., § 5684; Acts 1947, No. 201, § 1; 1957, No. 173, § 1; 1963, No. 192, § 1; 1971, No. 455, § 1; A.S.A. 1947, § 12-1729.

Cross References. Fees as county timber inspector, § 15-32-410.

CASE NOTES

Extra Compensation.

An agreement between county judge and surveyor that surveyor would receive the compensation in excess of statutory

amount was unauthorized. *Prairie County v. Radican*, 174 Ark. 622, 296 S.W. 80 (1927) (decision prior to 1929 amendment).

21-6-304. Coroners.

- (a)(1) Coroners shall be allowed fees as follows:
- (A) For viewing a dead body in case of inquisition of death \$ 7.50
 - (B) For summoning each witness50
 - (C) For each deposition duly taken and returned50
 - (D) For summoning and swearing jury, taking and returning inquisition 25.00
 - (E) For taking each recognizance50
 - (F) For arresting any person whom, according to the inquisition or otherwise, he or she may be bound to arrest 1.00
 - (G) For going from his or her residence to the place of viewing a dead body and returning, each mile20
 - (H) For each mile traveled in arresting any person and committing such person20
 - (I) For each and every mile traveled in answering call wherein inquest is found not necessary, each mile05
 - (J) For each and every day for making the call and report to the circuit clerk where inquest is found not necessary 5.00
- (2) Such fees, together with the fees of the jurors and witnesses, shall be paid out of the county treasury as other demands.
- (b) For performing the duties of sheriff, the coroner shall be entitled to the same fees for the time being as are allowed to sheriffs for such services.

History. Acts 1875, No. 77, § 26, p. 167; 1875 (Adj. Sess.), No. 58, § 9, p. 103; C. & M. Dig., § 4593; Pope's Dig., § 5681;

Acts 1945, No. 271, § 2; 1953, No. 178, § 1; 1959, No. 38, § 1; A.S.A. 1947, § 12-1727.

CASE NOTES

ANALYSIS	Cummings, 55 Ark. 419, 18 S.W. 461 (1892).
Autopsies.	
Inquests.	Inquests.
Autopsies.	The coroner will not be allowed fees for conducting an inquest when it is evident before the inquest that death was due to natural causes. Clark County v. Callaway, 52 Ark. 361, 12 S.W. 756 (1890).
When an autopsy is necessary in determination of the cause of death at coroner's inquest, the county is liable for reasonable compensation to the physician performing the autopsy. St. Francis County v.	Cited: Partain v. Greene County, 158 Ark. 305, 250 S.W. 23 (1923).

21-6-305. Collector of revenue.

- (a) The collector of revenue shall be allowed commissions for collecting the revenue and for certifying the amount of real property tax reduction to the Chief Fiscal Officer of the State pursuant to § 26-26-310, as follows:
- (1) For the first ten thousand dollars (\$10,000) collected, five percent (5%) in kind;

(2) For all sums over ten thousand dollars (\$10,000) and under twenty thousand dollars (\$20,000) collected, four and one-half percent (4.5%) in kind;

(3) For all sums over twenty thousand dollars (\$20,000) collected, four percent (4%) in kind; and

(4) For the amount of real property tax reduction certified to the Chief Fiscal Officer of the State, four percent (4%) in kind.

(b) All commissions allowed to the collector by this section or any other law shall be paid into the county treasury as general revenues.

(c)(1) Commissions received by the county collector shall be used by the county collector to offset administrative costs.

(2)(A) The county collector may set aside up to ten percent (10%) of the gross commissions collected annually to be credited to the county collector's automation fund:

(i) To operate the office of the county collector;

(ii) For administrative costs; and

(iii) To purchase, maintain, and operate an automated record-keeping system.

(B) The acquisition and update of software for the automated accounting and record-keeping system shall be a permitted use of these funds.

(3) Moneys deposited in this fund may accumulate and shall be appropriated and expended for the uses designated in this section by the quorum court at the direction of the county collector.

(d) All moneys not used by the county collector to offset administrative costs or set aside into the county collector's automation fund shall be prorated to the appropriate taxing entities.

History. Acts 1883, No. 114, § 120 (last par.), p. 199; C. & M. Dig., § 10071; Pope's Dig., § 13832; Acts 1941, No. 120, § 1; 1943, No. 31, § 1; 1949, No. 348, §§ 1, 2; 1951, No. 105, § 1; A.S.A. 1947, §§ 12-1726, 12-1726n; Acts 2001, No. 1215, § 1; 2001, No. 1275, § 1; 2003, No. 847, § 1.

Amendments. The 2001 amendment by No. 1215 added present (c) and (d) and made stylistic changes.

The 2001 amendment by No. 1275 inserted "and for certifying...§ 26-26-310" in the introductory language of (a); deleted former (a)(4), (b), and (c); and added present (a)(4) and (b).

The 2003 amendment redesignated former (c)(2)(A) as present (c)(2)(A) and (c)(2)(A)(iii); and inserted present (c)(2)(A)(i) and (c)(2)(A)(ii).

CASE NOTES

ANALYSIS

Road taxes.
Special act.

Road Taxes.

Commission for collection of road taxes is determined from the total amount of all taxes collected. Road Imp. Dist. No. 4 v. Smith, 164 Ark. 522, 262 S.W. 314 (1924).

Special Act.

Where the Auditor of State settled with

a tax collector on the basis of this section instead of a special act (Acts 1917, No. 48) providing fees for that tax collector, thereby leaving in his hands a sum as commission on the state taxes to which he was not entitled under the special act, the county was not entitled to such surplus. Independence County v. Wright, 154 Ark. 184, 241 S.W. 903 (1922).

Cited: Venhaus v. Board of Educ., 280 Ark. 441, 659 S.W.2d 179 (1983).

21-6-306. **Recorders.**

(a) The uniform fees to be charged by the recorders in the various counties in this state shall be as follows:

(1) For recording deeds, deeds of trust, mortgages, release deeds, powers of attorney, and other recordable instruments, except as otherwise prescribed in this section, eight dollars (\$8.00) for one (1) page, one (1) side only, and three dollars (\$3.00) for each additional page; and

(2) For filing or recording all instruments other than those prescribed in subdivision (1) of this section that are normally placed on record in the recorder's office:

- (A) Plats: when measurements exceed 8½" x 14" \$12.00
- (B) Survey plats: 8½" x 14" or smaller 8.00
- (C) Materialman's lien and certificate of assessment 8.00
- (D) Notary bond 8.00
- (E) Foreign judgments 8.00
- (F) Writs of garnishment or execution of garnishment 10.00
- (G) For entering satisfaction of record, marginal50

(b)(1) All fees collected under this section shall be paid into the county treasury to the credit of the fund to be known as the "county recorder's cost fund".

(2) Moneys deposited in this fund shall be appropriated and expended for the uses designated in this section by the quorum court at the direction of the recorder.

(c)(1) All moneys collected by the recorder as a fee as provided in this section shall be used by the recorder's office to offset administrative costs.

(2)(A) At least twenty-five percent (25%) of the moneys collected annually shall be used to purchase, maintain, and operate an automated records system. The acquisition and update of software for the automated records system shall be a permitted use of these funds.

(B) At the discretion of the recorder, any funds not needed by the recorder for any of the purposes under this subdivision (c)(2) may be transferred to the county general fund.

History. Acts 1945, No. 55, § 2; 1963, No. 124, § 1; 1977, No. 333, § 3; A.S.A. 1947, § 12-1720; Acts 1989, No. 534, § 2; 1995, No. 768, § 1; 2001, No. 1144, § 1; 2003, No. 1339, § 1.

Amendments. The 2001 amendment, in (a)(1), substituted "eight dollars (\$8.00)" for "six dollars (\$6.00)" and "three

dollars (\$3.00)" for "two dollars (\$2.00)"; and substituted "section that are" for "section which are" in (a)(2).

The 2003 amendment added (c)(2)(B).

Cross References. Circuit court clerks as ex officio recorders, § 14-14-1301.

Acknowledgment of satisfaction on record, § 18-40-104.

CASE NOTES

County Ordinances.

The General Assembly, by adopting this section, established a standard amount of recording fee and preempted a field that otherwise could have been validly regu-

lated by county ordinance. *Kollmeyer v. Greer*, 267 Ark. 632, 593 S.W.2d 29 (1980).

Where the ordinances of a county quorum court which levied additional local recording fees on deeds and other instru-

ments were inconsistent and in conflict with this section, those ordinances exceeded the local legislative authority granted to the counties by Ark. Const. Amend. 55 and § 14-14-801 et seq. and were, therefore, void and the moneys collected thereunder had to be refunded. *Kollmeyer v. Greer*, 267 Ark. 632, 593 S.W.2d 29 (1980).

21-6-307. Sheriffs.

(a) The following fees shall be charged by each of the sheriffs of the several counties of the State of Arkansas:

(1) For serving every summons, capias, scire facias, attachment, writ of garnishment, writ of injunction, or subpoena ...	\$ 30.00
(2) For serving a writ of execution	100.00
(3) For commission for receiving and paying money on execution or process when lands or goods have been taken into custody, advertised, or sold	10%
(4) For every return of a writ, summons, or subpoena, original or judicial	20.00
(5) For executing a writ of inquiry	20.00
(6) For executing a certificate of purchase for real estate under execution	20.00
(7) For making, executing, and subscribing a sheriff's deed to be paid by purchaser	30.00
(8) For serving each order, notice, or rule of any court	30.00
(9) For serving each notice to vacate	30.00
(10) For advertising goods or lands for sale	30.00
(11) For returning each execution or attachment	20.00
(12) For advertising elections in each voting precinct	20.00
(13) For delivering voter registration books for each voting precinct	20.00
(14) For serving warrant or order of arrest from any court	50.00
(15) For taking and entering every bail or delivery bond ...	20.00
(16) For attending every trial of a criminal or civil case of confession in open court	20.00
(17) For serving subpoena for special jurors	20.00

(b)(1) Seventy-five percent (75%) of all fees collected by the sheriff shall be paid into the county treasury in the manner provided by law, or to the person entitled to receive the money, or to his or her order, or to his or her attorney of record.

(2)(A) The remaining twenty-five percent (25%) of all fees collected by the sheriff shall be used by the sheriff to establish a special fund to be known as the communications facility and equipment fund.

(B) All funds so designated shall be invested by the sheriff in an interest-bearing account or certificate of deposit in one (1) or more banking institutions domiciled within the State of Arkansas and insured by the Federal Deposit Insurance Corporation.

(C) All sums paid into the communications facility and equipment fund by the sheriff may accumulate as to principal and interest until

such time as the deposits or a portion thereof are needed by the sheriff to:

- (i) Train operations staff;
- (ii) Operate, equip, repair, or replace existing communications equipment;
- (iii) Purchase additional communications equipment; or
- (iv) Otherwise improve a communications facility or system for the sheriff's department.

(D) At the discretion of the sheriff, any funds not needed by the sheriff for any of the purposes under this subdivision (b)(2) may be transferred to the county general fund.

(c) The court clerk shall on or before the fifteenth day of each month transmit to the sheriff the fees collected under this section, and the sheriff shall dispose of the fees as provided in this section.

(d) If more persons than one are named in a writ, process, or subpoena, fees shall be charged for each named, unless parties reside or are employed in the same location.

(e) The fees provided shall be for serving of process from any of the several courts of the county.

(f) The fees set forth in this section shall be the sole and exclusive fees to be charged by the sheriffs of the several counties of this state for each of the services enumerated in this section.

History. Acts 1977, No. 399, § 1; 1981, No. 256, § 1; 1983, No. 717, § 1; 1985, No. 851, § 1; A.S.A. 1947, § 12-1722; Acts 1995, No. 662, § 1; 2001, No. 1427, § 1; 2003, No. 1338, § 1.

Amendments. The 2001 amendment substituted "30.00" for "15.00" in (a)(1) and (a)(7)-(10); substituted "100.00" for

"50.00" in (a)(2); substituted "10%" for "7%" in (a)(3); substituted "20.00" for "10.00" in (a)(4)-(6), (a)(11)-(13), and (a)(15)-(17); and substituted "50.00" for "25.00" in (a)(14).

The 2003 amendment inserted "to" preceding "his" twice in (b)(1); and added (b)(2)(D).

CASE NOTES

ANALYSIS

In general.

Bond.

Notice of appointment.

Service of process.

Unable to levy.

In General.

The right of a sheriff to charge fees is derived from and dependent on statute and he is not entitled to any compensation except as is given to him by law. *Miller County v. Magee*, 177 Ark. 752, 7 S.W.2d 973 (1928) (decision under prior law); *Campbell v. White*, 294 Ark. 656, 746 S.W.2d 42 (1988).

Bond.

Where the sheriff had not collected the amount of a forfeited bond, he was not

entitled to a collection fee. *McInturf v. State*, 175 Ark. 388, 299 S.W. 388 (1927) (decision under prior law).

Notice of Appointment.

The sheriff was entitled to fees for serving on the judges of election notice of their appointment. *Ouachita County v. Chidester*, 99 Ark. 206, 137 S.W. 811 (1911) (decision under prior law).

Service of Process.

In a suit to enforce a lien on 66 tracts of land belonging to one person, where 66 copies of the summons were served on the owner, the sheriff was entitled to one fee therefor, service of only one copy being necessary. *Sewer Dist. No. 1 v. School Dist.*, 70 Ark. 59, 66 S.W. 152 (1902) (decision under prior law).

Although special act creating a municipal court provided certain duties to be performed by the constable, where process from the municipal court was directed to the sheriff, he was entitled to fees for the service. *Miller County v. Magee*, 177 Ark. 752, 7 S.W.2d 973 (1928) (decision under prior law).

Unable to Levy.

Subdivision (a)(2) does not authorize a

fee for serving a writ of execution when the sheriff is unable to levy upon a defendant's property or to notify a defendant, by serving him a copy of the writ, of the sheriff's intention to levy on the defendant's property. *Campbell v. White*, 294 Ark. 656, 746 S.W.2d 42 (1988).

Cited: *City of Greenbrier v. Cotton*, 293 Ark. 264, 737 S.W.2d 444 (1987).

21-6-308. Constables.

(a) The quorum court shall fix the salary of the constables that are elected within the jurisdiction of the quorum court.

(b) All constables in this state shall collect and account for all fees collected and the fees shall be deposited with the county treasurer in the constable's jurisdiction not more than thirty (30) days after their collection.

(c) Constables shall collect and account for the following fees:

(1) For serving a warrant in a criminal case, for each defendant	\$ 2.00
(2) For taking a criminal to jail	2.00
(3) For summoning each jury before a justice of the peace	1.00
(4) For levying each execution	2.00
(5) For taking each delivery bond	1.00
(6) For summoning each witness .....	.75
(7) For levying a writ of attachment	2.00
(8) For every return of non est on a writ, original or judicial, or subpoena .....	.20
(9) For return of nulla bona .....	.20
(10) For attending a trial of each case in the court of a justice of the peace .....	.50
(11) For attending and calling court at each trial upon continuance .....	.50
(12) For care of each prisoner while in actual custody for each day ..	.75
(13) For summoning each defendant	2.00

History. Acts 1875, No. 77, § 31, p. 167; 1875 (Adj. Sess.), No. 58, § 11, p. 103; 1885, No. 97, § 1, p. 156; 1885, No. 98, § 2, p. 157; 1899, No. 190, § 1, p. 334; 1903, No. 32, § 1, p. 55; C. & M. Dig., § 4598; Pope's Dig., § 5687; Acts 1947, No. 221, § 1; 1961, No. 472, § 1; 1971, No.

233, § 1; 1973, No. 141, § 1; A.S.A. 1947, § 12-1730.

Cross References. Townships containing city having municipal court or state-supported educational institution, constables not entitled to fees in criminal cases, § 16-17-114.

21-6-309. Notaries public.

(a) Each notary public in this state shall charge and collect the following fees:

(1) For protest and record of same\$ 5.00

- (2) For each notice of protest 5.00
- (3) For each certificate and seal 5.00
- (b)(1) Any notary public who shall knowingly charge, demand, or receive any fees not provided by law, or who shall charge, demand, or receive any greater fees than are provided in this section shall be deemed guilty of a misdemeanor.
- (2) Upon conviction, he or she shall be fined in any sum not less than one hundred dollars (\$100) for each and every offense.

History. Acts 1923, No. 142, §§ 1, 2; 155, § 1; A.S.A. 1947, §§ 12-1733, 12-Pope’s Dig., §§ 5685, 5686; Acts 1969, No. 1739; Acts 1989, No. 304, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Official Misconduct under the Arkansas Criminal Code, 30 Ark. L. Rev. 160.

21-6-310. Officers and employees generally — Disposition of funds.

- (a) All fees, fines, penalties, and other moneys collected by any county officer, deputy, or county employee shall be deposited with the county treasurer on the first day of each month or within five (5) days thereafter, and, unless otherwise provided by law, shall be placed in the county general fund.
- (b) The county treasurer shall keep a complete and accurate record of the receipt of such moneys and shall provide a written receipt to the person or office making such deposit.

History. Acts 1975, No. 127, § 2; A.S.A. 1947, § 12-1741.

SUBCHAPTER 4 — OFFICERS OF THE COURT

SECTION.	SECTION.
21-6-401. Clerk of Supreme Court.	tain checks, orders, drafts, or other forms of presentment involving the transmission of account information.
21-6-402. Circuit court clerks — Miscellaneous fees.	21-6-412. Commissioners to sell property.
21-6-403. Circuit court clerks — Uniform filing fees.	21-6-413. Probate and county matters — Miscellaneous court fees.
21-6-404, 21-6-405. [Repealed.]	21-6-414. Probate and county matters — Uniform court costs.
21-6-406. Clerks of county courts — Miscellaneous fees.	21-6-415. County court clerks — Uniform filing fees.
21-6-407. Fees of clerks of county courts — Method of payment.	
21-6-408, 21-6-409. [Repealed.]	
21-6-410. [Repealed.]	
21-6-411. Prosecuting attorneys — Cer-	

Cross References. Forfeiture of fees for improper taxation of costs, § 16-68-409.

Legal Education Fund, § 6-64-601 et seq.

Payment of fees as prerequisite to entry of action or issuance of writ, § 16-58-101.

Effective Dates. Acts 1875, No. 77, § 53: effective on passage.

Acts 1875 (Adj. Sess.), No. 58, § 15: effective on passage.

Acts 1887, No. 89, § 2: effective on passage.

Acts 1889, No. 7, § 2: effective on passage.

Acts 1895, No. 145, § 9: effective on passage.

Acts 1917, No. 251, § 2: effective on passage. Emergency declared. Approved Mar. 16, 1917.

Acts 1929, No. 172, § 40: approved Mar. 22, 1929. Emergency clause provided: "It is ascertained and hereby declared that the present system of assessing property for taxation is defective, unfair, unjust and inequitable; that the changes herein contemplated are necessary in order to bring about a more equitable distribution of the costs of government, so that the immediate operation of the Act is essential for the preservation of the public peace, health and safety, and an emergency is therefore declared, and this Act shall take effect and be in force from and after its passage."

Acts 1945, No. 55, § 3: Feb. 16, 1945. Emergency clause provided: "All laws and parts of laws in conflict herewith are hereby repealed, and because of the confusion and uncertainty existing in the various counties throughout the State under the present laws relative to the legal fees entitled to be charged by the Circuit and Chancery Clerks and Recorders in this State for the services they render, an emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage and approval."

Acts 1947, No. 111, § 4: July 1, 1947. "All laws and parts of laws enacted by the General Assembly of the State of Arkansas in conflict herewith are hereby repealed, effective July 1, 1947.

"APPROVED: February 24, 1947."

Acts 1947, No. 221, § 4: Mar. 18, 1947. Emergency clause provided: "Whereas, the fees now being paid to justices of the peace and constables of this State are

totally inadequate to compensate them for the services rendered; now, therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1959, No. 309, § 2: Mar. 26, 1959. Emergency clause provided: "Because of the confusion and uncertainty existing in the various counties throughout the State under the present laws relative to the legal fees entitled to be charged by the County and Probate Clerks in the State of Arkansas, for the services they render, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after its passage and approval."

Acts 1961, No. 132, § 3: Feb. 22, 1961. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that the funds available to the Supreme Court for the maintenance and improvement of the Supreme Court Library are grossly inadequate, that there is urgent need for additional funds, and that enactment of this bill will provide the additional necessary funds. Therefore, an emergency is declared to exist, and this act, being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from the date of its approval."

Acts 1969, No. 307, § 3: Mar. 21, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that in the case of Doty v. Goodwin, 246 Ark. 149 (1969) the Arkansas Supreme Court held that a justice of the peace could not have a pecuniary interest in convicting the accused; that this means that justices of the peace in this State will have to try all criminal cases without any compensation since no provision has been made for reimbursing such justices of the peace other than upon a fee system based on the conviction of the accused; that some counties in this State do not have municipal courts; and that in order to remedy this situation, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace,

health and safety shall become effective from and after its passage and approval."

Acts 1969, No. 657, § 3: became law without Governor's signature, May 29, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that in the case of Doty v. Goodwin, 246 Ark. 149 (1969) the Arkansas Supreme Court held that a justice of the peace could not have a pecuniary interest in convicting the accused; that this means that justices of the peace in this State will have to try all criminal cases without any compensation since no provision has been made for reimbursing such justices of the peace other than upon a fee system based on the conviction of the accused; that in order to remedy this situation, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1977, No. 333, § 6: Mar. 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the establishment of uniform advance fees to be charged for causes of action by the clerks in the various circuit and chancery courts of this State is necessary to provide for the efficient operation of said offices and to minimize the necessity of maintaining separate accounts for various fees; that the fees charged by county recorders are not now adequate to reimburse the county for the service of recording instruments, and that the immediate passage of this Act is necessary to promote the efficient administration of justice in this State and to enable counties to recover reasonable fees for services rendered by recorders. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 601, § 4: approved Mar. 23, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly that the filing fees for proceedings in the Supreme Court have remained unchanged since 1977 in spite of inflationary trends and greatly increased costs, particularly in the field of legal publications. As a result, the

cost of maintenance and improvement of the Supreme Court Library increased to the extent that financial resources for that purpose have been virtually exhausted. Since the fees paid for filing appeals and petitions are a substantial part of the resources devoted to the maintenance and improvement of the Supreme Court Library and there is a dire need for enhancement of those resources, an emergency is hereby declared to exist and this Act, being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after the date of its passage."

Acts 1981, No. 824, § 12: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the practice of court reporting should be regulated by the Arkansas Supreme Court and that the salaries of court reporters should be set and appropriated by the State, and that this Act is immediately necessary to accomplish the same. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981 (Ex. Sess.), No. 16, § 12: Nov. 25, 1981. Emergency clause provided: "It is hereby found and determined that some of the provisions of Act 824 of 1981, which provides that the official court reporters of the circuit and chancery courts in the State are state employees, and provides for the levy and collection of additional court costs to pay the salaries and expenses of reporters, are vague and difficult to interpret, and that it is essential to the effective and efficient administration of justice that this Act be given effect immediately to clarify the law relating to court reporters. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981 (Ex. Sess.), No. 27, § 5: Dec. 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, meeting in Extraordinary Session, that the passage of this Act is necessary for continued efficient operation of the Circuit and Chancery Courts and to pay authorized salaries

for the official Court Reporters. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after the date of its passage and approval."

Acts 1989, No. 534, § 10: Mar. 14, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees currently charged for filing and recording instruments for initiation of actions in the circuit and chancery courts and for other official functions of the circuit and chancery courts are inadequate and should be increased immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989 (3rd Ex. Sess.), No. 34, § 6: Nov. 8, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that since the passage of Act 273 of 1989 there has arisen the need to clarify that certain cases brought by the prosecuting attorney or the Department of Human Services have traditionally been brought without the necessity of payment of a filing fee to the court clerk; that additional confusion has arisen over an unnecessary requirement that the prosecuting attorney accompany delinquency petitions with a supporting affidavit of facts; that these two requirements constitute a burden on the juvenile justice system of this state; that it is in the best interests of all citizens of this state that these matters be clarified; that this act should become effective immediately upon its passage to alleviate these concerns. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1256, § 23: Apr. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the current system of funding the

state judicial system has created inequity in the level of judicial services available to the citizens of the state; and it is further determined that the current method of financing the state judicial system has become so complex as to make the administration of the system impossible, and the lack of reliable data on the current costs of the state judicial system prohibits any comprehensive change in the funding of the system at this time. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 788, § 36: became law without the Governor's signature. Noted Mar. 11, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the effectiveness of this act on July 1, 1997 is essential to the operation of the state court system, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental progress. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1997."

Acts 1997, No. 1341, § 35: became law without the Governor's signature. Noted Apr. 11, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the effectiveness of this act on July 1, 1997 is essential to the operation of the state court system, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental progress. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after July 1, 1997."

21-6-401. Clerk of Supreme Court.

(a)(1) The Clerk of the Supreme Court shall be allowed and paid by the appellant or petitioner, in advance, in all civil actions and misdemeanors filed in either the Supreme Court or Arkansas Court of Appeals a fee of one hundred dollars (\$100), which shall be full payment of all the costs in the proceedings.

(2) If the judgment of the Supreme Court or Arkansas Court of Appeals is in favor of the appellant or petitioner, the clerk shall tax the fee provided in this subsection in favor of the appellant or petitioner.

(b)(1) The Clerk of the Supreme Court shall be allowed and paid by the petitioner, in advance, for each petition for review of a decision of the Arkansas Court of Appeals filed in the Supreme Court a fee of twenty-five dollars (\$25.00), which shall be full payment of all the costs in the proceedings.

(2) If the decision of the Arkansas Court of Appeals is reversed by the Supreme Court, the clerk shall tax the fee provided in this subsection in favor of the petitioner.

- (c) The clerk shall also be allowed:
- | | |
|--|---------|
| (1) For each certificate and seal | \$ 1.00 |
| (2) For acknowledging each deed | .50 |
| (3) For copies of papers and records per page | .50 |
| (4) For enrolling and recording the license of each attorney permitted to practice in the Supreme Court, and the certified transcript thereof furnished the attorney | 20.00 |
| (5) For other services, the same fees allowed clerks of the circuit court. | |

(d) The clerk shall have the authority to implement a system whereby members of the public may be afforded electronic access to court decisions and other court records, and the Supreme Court may, by court rule, establish a reasonable fee for the access.

(e) All of the fees provided for in subsections (a), (b), (c), and (d) of this section shall be deposited in a bank to the account of the Supreme Court Library Fund, to be used by the Supreme Court for the maintenance and improvement of the Supreme Court Library.

History. Acts 1851, § 7, p. 89; 1895, § 1; 1961, No. 133, § 1; 1981, No. 601, No. 145, § 7, p. 213; C. & M. Dig., §§ 1, 2; A.S.A. 1947, §§ 12-1709 — 12-§§ 2141, 4572, 9776f; Pope's Dig., 1709.2, 22-238; Acts 1993, No. 822, § 1. §§ 2747, 5656, 13315; Acts 1961, No. 132,

CASE NOTES

ANALYSIS	
Docket fees.	tion in divorce cases from the requirement
Felony cases.	of payment of the docket fee as a prere-
	quisite to its jurisdiction. In re Smith, 183
	Ark. 1025, 39 S.W.2d 703 (1931).
Docket Fees.	
In the absence of statutory authority,	Felony Cases.
the Supreme Court cannot make an excep-	This section does not permit the collec-

tion of a filing fee in a felony case. *Langley v. State*, 343 Ark. 324, 34 S.W.3d 364 (2001).

The appellant was properly required to pay a \$ 100 filing fee where she appealed

from a judgment entered against her on both a misdemeanor charge and felony charges. *Langley v. State*, 343 Ark. 324, 34 S.W.3d 364 (2001).

21-6-402. Circuit court clerks — Miscellaneous fees.

The fees for clerks of circuit courts in this state shall be as follows:

(1) For drawing and issuing, sealing any summons, subpoena \$	2.50
(2) For taking and entering a bond, civil or criminal .....	.60
(3) For every motion, rule, answer, interrogatories, or other miscellaneous filings .....	.60
(4) For entering every order or decree	2.00
(5) For entering each judgment	3.00
(6) For swearing jury	2.00
(7) For trial before court	1.00
(8) For scire facias	15.00
(9) For writs or executions	10.00
(10) For certificate and seal	2.00
(11) For each page in making and preparing any transcript	1.50
(12) For indexing each page .....	.10
(13) For certifying costs	1.00
(14) For issuing juror or witness certificates .....	.50

History. Acts 1945, No. 55, § 1; 1977, No. 333, § 2; A.S.A. 1947, § 12-1710; Acts 1999, No. 1081, § 7; 2003, No. 1765, § 26.

Amendments. The 1999 amendment rewrote (8).

The 2003 amendment deleted “and chancery” following “circuit” in the section catchline and introductory language; and substituted “10.00” for “4.00” in (9).

RESEARCH REFERENCES

Ark. L. Rev. Divorce — Indigent’s Right to Avoid Payment of Filing Fees, 26 Ark. L. Rev. 87.

CASE NOTES

ANALYSIS

In general.
Appeal from inferior court.
Fee not allowed.
Indexing.
Liability of county.
Summons.
Transcripts.

In General.

The clerk is without power to waive statutory fees. *McCourtney v. Morrow*, 216 Ark. 959, 229 S.W.2d 124 (1950).

Appeal from Inferior Court.

Filing an appeal from municipal court is

“initiating a cause of action” in the circuit court under § 21-6-403 so that an advance fee must be paid under subdivision (8) of this section. *Neeley v. Barber*, 288 Ark. 384, 706 S.W.2d 358 (1986).

The filing fee charged for appealing to the circuit court is collected no matter whether the defendant is tried by a jury or by the judge or even if the prosecution ends without any trial at all. *Neeley v. Barber*, 288 Ark. 384, 706 S.W.2d 358 (1986).

Fee Not Allowed.

The circuit clerk was not entitled to any fee for a certificate of attendance to jury

commissioners. *Logan County v. Trimm*, 57 Ark. 487, 22 S.W. 164 (1893) (decision under prior law).

Indexing.

The circuit clerk was entitled to his fee for every record entry indexed. *Trimble v. St. Louis & S.F. Ry.*, 56 Ark. 249, 19 S.W. 839 (1892) (decision under prior law).

Liability of County.

The county was liable to circuit clerk for the fee provided in this section for swearing and entering the regular panels of grand and petit jurors and for the fee in all criminal cases in which the county was chargeable with the costs for service in entering and swearing the jury in such case. *Logan County v. Trimm*, 57 Ark. 487, 22 S.W. 164 (1893) (decision under prior law). See *McDonald v. Logan County*, 55 Ark. 577, 18 S.W. 1047 (1892) (decision under prior law).

The circuit clerk was entitled to a fee for swearing jurors on their voir dire and witnesses to their attendance and, if the county was liable for the costs of the case, those fees were properly chargeable to it. *Logan County v. Trimm*, 57 Ark. 487, 22 S.W. 164 (1893) (decision under prior law).

While the county was liable for the clerk's fee for oaths administered to regular jurors, if a juror was called for a particular case, the oaths administered to him were chargeable to the case. *Logan County v. Trimm*, 57 Ark. 487, 22 S.W. 164 (1893) (decision under prior law).

When court ordered summons issued for jury commissioners, the clerk could charge the same to county as for summons. *Logan County v. Trimm*, 57 Ark. 487, 22 S.W. 164 (1893) (decision under prior law).

The circuit clerk was entitled to his fee for copies of order of court appointing jury commissioners, chargeable to the county. *Logan County v. Trimm*, 57 Ark. 487, 22 S.W. 164 (1893) (decision under prior law).

The clerk was entitled to a fee for entering every order with reference to the grand and petit juries, to be paid by the county. *Logan County v. Trimm*, 57 Ark. 487, 22 S.W. 164 (1893) (decision under prior law).

Summons.

In suit to foreclose and enforce lien for delinquent improvement taxes where clerk signed, sealed, and delivered to the sheriff numerous summonses, clerk and stenographer were each entitled to a fee for each summons, and the fact that they were printed made no difference. *Sebastian Bridge Dist. v. Lynch*, 200 Ark. 134, 138 S.W.2d 81 (1940) (decision under prior law).

Decree allowing fees of clerk and stenographer for summons which had been constructively served and disallowing fees for those personally served was unauthorized, since the fee was not dependent upon manner in which sheriff served the summons. *Sebastian Bridge Dist. v. Lynch*, 200 Ark. 134, 138 S.W.2d 81 (1940) (decision under prior law).

Transcripts.

Where the attorney in the case had the transcript typewritten, gave it to the clerk of court, who checked, corrected, and certified to it, this constituted making and preparing by the clerk within the meaning of this section. *McCourtney v. Morrow*, 216 Ark. 959, 229 S.W.2d 124 (1950).

21-6-403. Circuit court clerks — Uniform filing fees.

(a)(1) The uniform filing fees to be charged by the clerks of the circuit courts for initiating or reopening a cause of action in the circuit courts in the state shall be as prescribed in this section.

(2) No portion of the filing fees shall be refunded.

(b) The uniform filing fees shall be:

- (1) For initiating a cause of action in the circuit court, including appeals \$100.00
- (2) For reopening a cause of action in the circuit court 30.00
- (3) For any cause of action which by court order is transferred from any district or circuit court to a circuit court 50.00.

(c) No fee shall be charged or collected by the clerks of the circuit courts when the court, by order, pursuant to Rule 72 of the Arkansas Rules of Civil Procedure, allows an indigent person to prosecute a cause of action in forma pauperis.

(d) No initial filing fee shall be charged for domestic violence petitions filed pursuant to § 9-15-201 et seq. Established filing fees may be assessed pursuant to §§ 5-26-310 and 9-15-202(c).

(e) No fee shall be charged or collected by the clerks of the circuit courts for reopening a cause of action in the circuit court under the following circumstances:

(1) Application is made for revocation of conditional release of insanity acquittees pursuant to § 5-2-316; or

(2) An agreed order or an order of income withholding is presented to be filed, and no service of process is required.

(f) No county shall authorize, and no circuit court clerk shall assess or collect, any other filing fees than those authorized by this section unless specifically provided by state law.

(g) The circuit court may waive the filing fee in cases of involuntary admission upon a finding that the petition is being brought for the benefit of the respondent and it would be inequitable to require the petitioner to pay the fee.

(h) For purposes of this section, the term "circuit court clerk" means the circuit clerk and, with respect to probate matters, any county clerk who serves as ex officio clerk of the probate division of the circuit court.

History. Acts 1977, No. 333, § 1; 1981, No. 824, § 2; 1981 (Ex. Sess.), No. 16, §§ 9, 11; 1981, (Ex. Sess.), No. 27, § 4; A.S.A. 1947, § 12-1710.2; Acts 1989, No. 534, § 1; 1989 (3rd Ex. Sess.), No. 34, § 3; 1995, No. 1256, § 3; 1997, No. 788, § 25; 1997, No. 1341, § 25; 1999, No. 1081, § 4; 2003, No. 1185, § 259; 2003, No. 1765, § 27.

Amendments. The 1999 amendment added (b)(4).

The 2003 amendment by Nos. 1185 and

1765 deleted "and chancery" following "circuit" throughout the section; rewrote (b) and (e); deleted "or chancery" following "circuit" in (f); added (g) and (h); and made stylistic changes.

Cross References. Legislative intent of Acts 1997, No. 1341, § 16-10-601.

Legislative intent of Acts 1997, No. 788, § 16-10-602.

Transition to state funding, §§ 16-87-301 and 16-87-302.

CASE NOTES

ANALYSIS

Appeals.
Court costs.
Initiating cause of action.

Appeals.

The filing fee charged for appealing to the circuit court is collected no matter whether the defendant is tried by a jury or by the judge or even if the prosecution ends without any trial at all. *Neeley v. Barber*, 288 Ark. 384, 706 S.W.2d 358 (1986).

Court Costs.

In Arkansas, filing fees and service fees for subpoenas are authorized by statute; thus, the trial court was correct in assessing these costs. *Wood v. Tyler*, 317 Ark. 319, 877 S.W.2d 582 (1994).

Initiating Cause of Action.

Filing an appeal from municipal court is "initiating a cause of action" in the circuit court under this section so that an advance fee must be paid under subdivision (8) of § 21-6-402. *Neeley v. Barber*, 288 Ark. 384, 706 S.W.2d 358 (1986).

Cited: Courtney v. Butt, 264 Ark. 475,
572 S.W.2d 407 (1978).

21-6-404, 21-6-405. [Repealed.]

Publisher's Notes. These sections, (Ex. Sess.), No. 13, § 4. The sections were derived from the following sources:
concerning circuit, chancery, and probate 21-6-404. Acts 1981 (Ex. Sess.), No. 16,
court clerks' additional advance fee and § 1; A.S.A. 1947, § 12-1710.3.
additional circuit court clerks' fees in cer- 21-6-405. Acts 1981 (Ex. Sess.), No. 16,
tain cases, were repealed by Acts 1995, § 2; A.S.A. 1947, § 12-1710.4.
No. 1256, § 20, as amended by Acts 1995

21-6-406. Clerks of county courts — Miscellaneous fees.

Clerks of the county courts of the various counties in the State of Arkansas are authorized to charge the following maximum fees:

- (1) For each order to erect or repair bridge \$.50
- (2) For making out and issuing an order for the appointment of a commissioner to erect or repair any bridge50
- (3) For filing a bond of any contractor10
- (4) For reading and filing every petition and recording the order to be made thereon, for every one hundred (100) words .. .20
- (5) For making copy of petition, order, and other papers pertaining thereto, for every one hundred (100) words20
- (6) For reading and filing a remonstrance against any road or bridge25
- (7) For each certificate of appointment of road reviewers25
- (8) For issuing a precept of inquiry of damages in the case of roads50
- (9) For entering order for the appointment of a justice of the peace to apportion hands to work on roads, and copy of same, for every one hundred (100) words20
- (10) For entering the appointment of each overseer of a road25
- (11) For each notice to overseers and justices of the peace25
- (12) For entering each order concerning the erection or repairing of any county building, for every one hundred (100) words20
- (13) For entering the appointment of any commissioner to superintend the erection or repairing of any county building, for every one hundred (100) words20
- (14) For issuing the certificate of appointment to commissioner50
- (15) For entering every order for ascertaining any county line, for every one hundred (100) words20
- (16) For recording a return of any survey of a county line, for every one hundred (100) words20
- (17) For entering every order fixing the place of holding elections, for every one hundred (100) words20
- (18) For entering every order for the support of a poor person, for every one hundred (100) words20
- (19) For all services required to be performed relating to the laying out of a township, or altering township lines 1.00

(20) For trying and sealing any weight or measure, to be paid by the applicant .....	.50
(21) For taking, filing, and safekeeping of any bond required by law to be filed in his or her office, not otherwise provided for .....	.25
(22) For making settlements of each account with the county, to be paid to the county clerks for the official account record of the various accounts of the county treasurers and collectors, for each receipt entered on each account .....	.10
(23) For filing each county treasurer's and collector's receipt .....	.10
(24) For all services rendered in the filing of a claim against the county general and road accounts, and the issuing of the first warrant thereon .....	.75
(25) For each additional warrant issued on the same claim .....	.50
(26) For issuing each writ, receiving, filing, and docketing return .....	.50
(27) For recording marks or brands	1.00
(28) For filing each paper not specified in this section, except county claims .....	.10
(29) For administering each oath .....	.25
(30) For swearing each jury .....	.50
(31) For copies of records and papers not provided for in this section, for each one hundred (100) words or figures .....	.20
(32) For taking and entering verdict of jury .....	.25
(33) For entering judgments, except allowances against the county, for each one hundred (100) words .....	.20
(34) For commission to take depositions	1.00
(35) For indexing each case on record .....	.10
(36) For entering all appeals except on assessments records .....	.25
(37) For every certificate and seal not provided for in this section .....	.50
(38) For every subpoena or summons to witnesses .....	.50
(39) For recording every paper not provided for in this section, for each one hundred (100) words .....	.20
(40) For entering on record the appraised value of estray, and filing bond and appraisal .....	.75
(41) For filing and approving bond for marriage license .....	.50
(42) For filing, recording, and certifying copy of marriage license after its return .....	.50
(43) For each coupon of marriage license furnished registrar of vital statistics, to be retained by clerk in addition to salary .....	.10
(44) For all services in issuing general licenses, licenses to hawkers, ferries, taverns, peddlers, auctioneers, circuses, menageries, or other public exhibitions for which a license is by law required. Shows or public exhibitions may only be licensed for twelve (12) days or less for one (1) license fee	2.00
(45) For filing abstracts of witnesses before grand jury .....	.10
(46) For entering the judgment of the court on an abstract ..	1.00
(47) For issuing each certificate of land redemption	1.00

(48) For each additional tract on certificate of land redemption	.25
(49) For cancelling each warrant, to be paid by funds upon which warrants are drawn	.10
(50) The county clerk shall receive for services under the revenue laws for each settlement he or she makes with a clerk, sheriff, constable, or inferior collecting officer for fines, penalties, licenses, forfeitures, and seal tax by them, for which they are required to settle in full once each quarter	.75
(51) For auditing each account in collector's and treasurer's record quarterly	.75
(52) For each abstract forwarded to the Auditor of State and to the Director of the Department of Education	1.00
(53) For making out the original tax books, for every one hundred (100) words, counting one (1) figure as a word, but excluding calculations not carried into the tax records	.20
(54) For each copy thereof, for every one hundred (100) words, counting each figure as a word, as aforesaid	.20
(55) For furnishing copy of delinquent lands to printer for each tract	.10
(56) For attending sales of delinquent lands and making records thereof, for each tract for sale	.10
(57) For each additional tract	.10
(58) For transferring land to name of purchaser when sold to an individual	.10
(59) For furnishing for publication copy of the delinquent list of delinquent and insolvent personal taxpayers, for each name	.10
(60) For recording delinquent list of personal property, for every one hundred (100) words	.20
(61) For making each certificate of lands sold to the state and not redeemed to Commissioner of State Lands	5.00
(62) For making settlement with collector for each day employed including quarterly apportionments, not exceeding thirty (30) days during entire calendar year, per day	5.00
(63) For furnishing Auditor of State with an abstract of tax records	3.00
(64) For making a deed to the purchaser of lands sold at delinquent sale, one (1) tract per deed	1.00
(65) For waiting on county courts and the probate and juvenile divisions of circuit court, per day	10.00

History. Acts 1959, No. 309, § 1; A.S.A. 1947, § 12-1717.1; Acts 2003, No. 1185, § 261.

Amendments. The 2003 amendment substituted “and the probate and juvenile

divisions of circuit court” for “probate courts, and juvenile courts” in (65).

Cross References. City clerk to receive same fees as county clerk in attesting papers, § 14-43-406.

CASE NOTES

ANALYSIS

Apportionment.
County warrants.
Fee not allowable.
Liability of county.

Apportionment.

Where the tax books were partially made out by the county clerk then in office and completed by his successor in office, in a controversy between the two as to the division of the fees for the work, the county was only bound to the payment for the tax books, and where the county clerk who delivered the tax books to the collector was satisfied with the fees as apportioned by the clerk, the former clerk would not have been heard to complain. *Allen v. Clark County*, 108 Ark. 498, 158 S.W. 155 (1913) (decision under prior law).

County Warrants.

The county clerk was entitled to a fee for issuing warrants not signed or delivered. *St. Francis County v. Folbre*, 66 Ark. 91, 48 S.W. 1070 (1899) (decision under prior law).

Where, in a proceeding for calling in county warrants for allowance and reissuance, 2,247 warrants were presented by 700 different persons and the county court ordered 2,113 new warrants to be issued in lieu thereof, the clerk was entitled to a fee for the allowance and indexing of only 700 claims. *Duncan v. Scott County*, 70 Ark. 607, 70 S.W. 314 (1902) (decision under prior law).

Clerk was entitled to fee for service in

cancelling and redeeming county warrants, it being a service which the law requires him to perform, and the fee for services where no other fee was specifically provided was that fixed by statute. *Baker v. State ex rel. Independence County*, 201 Ark. 652, 147 S.W.2d 17 (1941) (decision under prior law).

Fee Not Allowable.

A county clerk was not entitled to a fee for each warrant paid and presented by the county treasurer for allowance in his annual settlements with the county. *Johnson County v. Bunch*, 63 Ark. 315, 38 S.W. 518 (1896) (decision under prior law).

Liability of County.

The county was not liable for the fees of the county clerk in entering an order of appointment of special bailiffs. *Logan County v. Trimm*, 57 Ark. 487, 22 S.W. 164 (1893) (decision under prior law).

The county was not liable for the fee for filing a claim against the county. *Prairie County v. Vaughan*, 64 Ark. 203, 41 S.W. 420 (1897) (decision under prior law).

A county was not liable for the county clerk's fee for filing county warrants for allowance and reissuance. *Duncan v. Scott County*, 70 Ark. 607, 70 S.W. 314 (1902) (decision under prior law).

The fee for making a deed to the purchaser of lands forfeited and sold for delinquent taxes is required to be paid by the purchaser and not by the county. *Sanderson v. Williams*, 142 Ark. 91, 218 S.W. 179 (1920) (decision under prior law).

21-6-407. Fees of clerks of county courts — Method of payment.

(a)(1) The fees provided for in § 21-6-406 shall be paid by the county under the order and direction of the county court.

(2) The county court shall examine and approve each fee account.

(3) If found correct, the county court shall make an order showing the amount due by the county by items and shall direct the clerk to draw his or her warrant on the county treasury for the amount due by the county.

(b) All fees of county clerks for extending the taxes, other than those paid by special improvement districts, shall be paid from the general fund of the county.

History. Acts 1875, No. 77, § 13, p. 167; 1875 (Adj. Sess.), No. 58, § 6, p. 103; 1887, No. 89, § 1 (last par.), p. 139; 1889, No. 7, § 1, p. 5; C. & M. Dig., § 4578; Acts

1929, No. 172, § 35; Pope's Dig., § 5663; Acts 1947, No. 111, § 3; A.S.A. 1947, § 12-1719.

21-6-408, 21-6-409. [Repealed.]

Publisher's Notes. These sections, concerning masters in chancery and justices of the peace, were repealed by Acts 2003, No. 1185, §§ 262 and 263 respectively. The sections were derived from the following sources:

21-6-408. Acts 1875, No. 77, § 14, p. 167; C. & M. Dig., § 4580; Pope's Dig., § 5665; A.S.A. 1947, § 12-1711.

21-6-409. Acts 1875, No. 77, § 32, p. 167; 1875 (Adj. Sess.), No. 58, § 12, p. 103; C. & M. Dig., § 4599; Pope's Dig., § 5688; Acts 1947, No. 221, § 2; 1969, No. 307, § 1; 1969, No. 657, § 1; A.S.A. 1947, §§ 12-1731, 12-1731.1; Acts 1987, No. 445, § 1.

21-6-410. [Repealed.]

Publisher's Notes. This section, concerning prosecuting and city attorneys, was repealed by Acts 1995, No. 1256, § 20, as amended by Acts 1995 (1st Ex. Sess.), No. 13, § 4. The section was derived from Acts 1875, No. 77, § 4, p. 167;

1875 (Adj. Sess.), No. 58, § 1, p. 103; C. & M. Dig., § 4571; Init. Meas. 1936, No. 3, § 37, Acts 1937, p. 1384; Pope's Dig., §§ 4121, 5655; A.S.A. 1947, §§ 12-1707, 12-1708; Acts 1989, No. 796, § 1; 1991, No. 904, §§ 15, 20.

21-6-411. Prosecuting attorneys — Certain checks, orders, drafts, or other forms of presentment involving the transmission of account information.

(a) A prosecuting attorney may collect a fee if his or her office collects and processes a check, order, draft, or other form of presentment involving the transmission of account information if the check, order, draft, or other form of presentment involving the transmission of account information has been issued or passed in a manner which makes the issuance or passing an offense under:

- (1) The Arkansas Criminal Code;
- (2) The Arkansas Hot Check Law, §§ 5-37-301 — 5-37-306; or
- (3) Section 5-37-307.

(b) A prosecuting attorney may collect a fee from any person issuing a bad check as described in subsection (a) of this section. The amount of the fee shall not exceed:

(1) Fifteen dollars (\$15.00) if the face amount of the check, order, draft, or other form of presentment involving the transmission of account information does not exceed one hundred dollars (\$100);

(2) Thirty dollars (\$30.00) if the face amount of the check, order, draft, or other form of presentment involving the transmission of account information is greater than one hundred dollars (\$100) but does not exceed three hundred dollars (\$300);

(3) Fifty dollars (\$50.00) if the face amount of the check, order, draft, or other form of presentment involving the transmission of account information is greater than three hundred dollars (\$300) but does not exceed five hundred dollars (\$500); and

(4) Seventy-five dollars (\$75.00) if the face amount of the check, order, draft, or other form of presentment involving the transmission of account information is greater than five hundred dollars (\$500).

(c) If the person from whom the fee is collected was a party to the offense of forgery, under §§ 5-37-101 and 5-37-201 — 5-37-214, by altering the face amount of the check, order, draft, or other form of presentment involving the transmission of account information, the face amount as altered governs for purposes of determining the amount of the fee.

(d) Fees collected under this section shall be deposited in a special fund to be administered by the prosecuting attorney.

(e)(1) In those counties in which the sheriff is operating a hot check program and the prosecuting attorney is not operating such a program on September 20, 1985, the sheriff shall be entitled to continue the program as long as he or she elects to do so and the prosecuting attorney shall not initiate any such program in the county unless the sheriff in the county discontinues his or her program.

(2) In those counties in which the sheriff operates a hot check program, the sheriff's office shall be entitled to the same fees as provided in this section, but all fees shall be paid into an account for the sheriff's office and shall be subject to appropriation by the quorum court to be used to defray the cost of the hot check program and other costs of the sheriff's office.

(f) This section is cumulative to all other acts and shall not repeal any other act.

History. Acts 1985 (1st Ex. Sess.), No. 33, §§ 2-4; A.S.A. 1947, §§ 67-727, 67-728, 67-728n; Acts 2003, No. 1088, § 1.

A.C.R.C. Notes. For codification of the Arkansas Criminal Code, see the "meaning of 'this code'" note at § 5-1-101.

Amendments. The 2003 amendment inserted "or other forms of presentment

involving the transmission of account information" in the section heading and throughout the section; substituted "Section" for "Ark. Code Ann. §" in (a)(3); rewrote (b)(1); deleted former (b)(2) and redesignated former (b)(3) through (b)(5) as present (b)(2) through (b)(4); and made gender neutral and stylistic changes.

21-6-412. Commissioners to sell property.

(a)(1) Commissioners appointed to make sales of real property under judicial decrees shall be allowed the following fees as compensation for such services:

On sales for	\$ 1.00	to \$ 500	\$10.00
On sales for	500	to 2,500	15.00
On sales for	2,500	to 5,000	20.00
On sales for	5,000	to 10,000	25.00
On sales for	10,000	to 20,000	30.00
On sales for	20,000	to 35,000	35.00
On sales for	35,000 or more, one-tenth of one percent (0.1%).		

(2) Commissioners appointed to make sales of personal property under judicial decrees shall be allowed as compensation for such

services the fee prescribed by the judge of the court that issued the decree.

(b) In lieu of the fees provided for in this section, the court may set reasonable fees for commissioners based upon services rendered on sales under thirty-five thousand dollars (\$35,000).

History. Acts 1875, No. 77, § 52, p. 167; 1917, No. 251, § 1, p. 1324; C. & M. Dig., §§ 4581, 4582; Pope’s Dig., §§ 5666, 5667; A.S.A. 1947, §§ 12-1712, 12-1713; Acts 1989, No. 32, § 1; 1989, No. 751, § 1; 1995, No. 1296, § 79; 2003, No. 1740, § 1.

Amendments. The 2003 amendment deleted former (b); redesignated former (c) as present (b); and made minor stylistic changes.

CASE NOTES

ANALYSIS

Clerk as ex officio commissioner.
Fees controlling.
Reduction of fee.

Clerk as Ex Officio Commissioner.
The circuit clerk is an ex officio commissioner and the salary allowed him as clerk covers the entire compensation fixed by law for all duties performed by him as clerk or as commissioner ex officio. State ex rel. Lonoke County v. Swaim, 167 Ark. 225, 268 S.W. 366 (1925).

Fees Controlling.
A chancery clerk commissioner appointed for the purpose of selling property involved in a divorce action was entitled only to a fee of \$52, pursuant to the

specified provision of this section, where the property sold for \$52,000; the clerk was not entitled to collect a fee of \$600 which was purportedly awarded to him pursuant to § 16-13-313 since § 16-13-313 expressly exempts cases where the compensation may now or hereafter be fixed by law. Valley Nat’l Bank v. Stroud, 289 Ark. 284, 711 S.W.2d 785 (1986).

Reduction of Fee.
Where the commissioner’s fee exceeded the amount allowed by this section and the record did not reflect that the defendant ever waived an objection to the fee, the fee was reduced to the statutory amount. Meeks v. Meeks, 290 Ark. 563, 721 S.W.2d 653 (1986).

21-6-413. Probate and county matters — Miscellaneous court fees.

(a) Miscellaneous court fees are established as follows:

Dissolutions of incorporation	\$25.00
Articles of incorporation	25.00
Amendments to articles of incorporation	25.00
Filing last will and testament for safekeeping	5.00
Authentication certificate	5.00
Certify and seal document	5.00
Marriage license	30.00
Certified copy of marriage license	5.00
Underage marriages — Petition and order	10.00
Small estates	25.00
Assumed names	25.00
Limited partnerships	25.00
Alcoholics and insane persons	25.00
Clerk’s tax deed	5.00
Recording doctors’ and nurses’ credentials	5.00

Recording ministers' credentials	5.00
Filing affidavit of claim against an estate	5.00
Filing power of attorney	10.00
Filing and recording all accounts and settlements	50.00
Certified copies of all letters	5.00
Issuing subpoena or summons	5.00
Putting up advertisement of settlement of executors, administrators, and guardians	5.00
Preparing notices of settlements to be published in paper each month	5.00
Filing exceptions	5.00

(b) With respect to probate matters, this section applies to circuit clerks and any county clerk who serves as ex officio clerk of the probate division of the circuit court.

(c) Any fee not specifically provided for in subsection (a) of this section shall be set by the circuit court if it is a probate matter or by the county judge if it is a county court matter.

(d) The fee provisions provided for in subsection (a) of this section shall be in lieu of any or all fees now established by law.

(e)(1)(A) Fees collected under this section shall be paid into the county treasury to the credit of the fund to be known as the "county clerk's cost fund".

(B) With the exception of those funds referred to in subdivision (e)(2) of this section, all funds deposited into the county clerk's cost fund are general revenues of the county and may be used for any legitimate county purpose.

(2)(A) At least thirty-five percent (35%) of the moneys collected annually shall be used to purchase, maintain, and operate an automated records system.

(B) The acquisition and update of software for the automated records system shall be a permitted use of these funds.

(C) Funds set aside for automation may be allowed to accumulate from year to year or at the discretion of the clerk may be transferred to the county general fund by a budgeted appropriated transfer.

(3)(A)(i) In those counties having combined offices of circuit clerk and county clerk, the clerk shall elect to use the automation fund authorized by this section or the automation fund allowed by the county recorder's cost fund, § 21-6-306.

(ii) In those counties having combined offices of county clerk and recorder, the clerk shall elect to use the automation fund authorized by this section or the automation fund allowed by the county recorder's cost fund, § 21-6-306.

(B) The clerk's election shall be made in writing and filed in the office of the circuit clerk.

(C) Under no circumstances shall the clerk be allowed to utilize both the automation fund as authorized by § 21-6-306 and the county clerk's cost fund as authorized in this subchapter.

History. Acts 2003, No. 1765, § 28.

21-6-414. Probate and county matters — Uniform court costs.

(a) Uniform court costs are established as follows:

Dissolutions of incorporation	\$25.00
Articles of incorporation	25.00
Amendments to articles of incorporation	25.00
Filing last will and testament for safekeeping	5.00
Authentication certificate	5.00
Certify and seal document	5.00
Marriage license	30.00
Certified copy of marriage license	5.00
Underage marriages — Petition and order	10.00
Small estates	25.00
Assumed names	25.00
Limited partnerships	25.00
Alcoholics and insane persons	25.00
Clerk's tax deed	5.00
Recording doctors' and nurses' credentials	5.00
Recording ministers' credentials	5.00
Filing affidavit of claim against an estate	5.00
Filing power of attorney	10.00
Filing and recording all accounts and settlements	50.00
Certified copies of all letters	5.00
Issuing subpoena or summons	5.00
Putting up advertisement of settlement of executors, administrators, and guardians	5.00
Preparing notices of settlements to be published in paper each month	5.00
Filing exceptions	5.00

(b) With respect to probate matters, this section applies to circuit clerks and any county clerk who serves as ex officio clerk of the probate division of the circuit court.

(c) Any fee not specifically provided for in subsection (a) of this section shall be set by the circuit court if it is a probate matter or by the county judge if it is a county court matter.

(d) The fee provisions provided for in this section shall be in lieu of any and all fees now established by law.

(e)(1)(A) Fees collected under this section shall be paid into the county treasury to the credit of the fund to be known as the "county clerk's cost fund".

(B) With the exception of those funds referred to in subdivision (e)(2) of this section, all funds deposited into the county clerk's cost fund are general revenues of the county and may be used for any legitimate county purpose.

(2)(A) At least thirty-five percent (35%) of the moneys collected annually shall be used to purchase, maintain, and operate an automated records system.

(B) The acquisition and update of software for the automated records system shall be a permitted use of these funds.

(C) Funds set aside for automation may be allowed to accumulate from year to year or at the discretion of the clerk may be transferred to the county general fund by a budgeted appropriated transfer.

(3)(A) In those counties having combined offices of circuit clerk and county clerk, the clerk shall elect to use the automation fund authorized by this section or the automation fund allowed by the county recorder's cost fund, § 21-6-306.

(B) The clerk's election shall be made in writing and filed in the office of the circuit clerk.

(C) Under no circumstances shall the clerk be allowed to utilize both the automation fund as authorized by § 21-6-306 and the county clerk's cost fund as authorized in this subchapter.

History. Acts 2003, No. 1185, § 260.

21-6-415. County court clerks — Uniform filing fees.

(a) The uniform filing fees to be charged by the clerks of the county court for initiating a cause of action in the county court shall be thirty dollars (\$30.00), and no portion of the filing fee shall be refunded.

(b) No county shall authorize, and no county court clerk shall assess or collect, any other filing fees other than those authorized unless specifically provided by state law.

(c) The provisions of § 21-6-413(e) shall apply to filing fees collected under this section.

History. Acts 2003, No. 1185, § 260; 2003, No. 1765, § 29.

A.C.R.C. Notes. The language originally assigned to § 21-6-405 by Acts 2003, No. 1185, § 260, is identical to the lan-

guage added to this subchapter by Acts 2003, No. 1765, § 29. Consequently the two act provisions were both codified as this section.

SUBCHAPTER 5 — MISCELLANEOUS FEES

SECTION.

- 21-6-501. Depositions — Officers.
- 21-6-502. Service of subpoena or warrant — Officers.
- 21-6-503. Telephone service of summons or subpoena.

SECTION.

- 21-6-504. Limitation on fees in criminal cases.
- 21-6-505. Expenses of keeping seized property.

Cross References. Legal Education Fund, § 6-64-601 et seq.

Effective Dates. Acts 1875, No. 77, § 53: effective on passage.

Acts 1907, No. 260, § 3: effective on passage.

21-6-501. Depositions — Officers.

(a) The fees allowed an officer for taking depositions shall be two dollars (\$2.00) for each deposition and five cents (\$.05) per mile for each mile that an officer has to travel in going to and returning from the place of the taking.

(b) The distance to be traveled shall be estimated from his or her office but if a number of depositions are taken in one (1) day for the same party in any action, the fees shall not exceed five dollars (\$5.00).

(c) If the officer shall be engaged more than one (1) day in taking a deposition, he or she shall receive two dollars (\$2.00) per day for each day he or she may be engaged in taking one (1) deposition.

History. Acts 1875, No. 77, § 17, p. 167; C. & M. Dig., § 4585; Pope's Dig., § 5671; A.S.A. 1947, § 12-1714.

21-6-502. Service of subpoena or warrant — Officers.

For issuing a subpoena or warrant of arrest and for summoning or arresting the witnesses, officers shall be allowed the same fees as are allowed to clerks and sheriffs for similar services.

History. Acts 1875, No. 77, § 18, p. 167; C. & M. Dig., § 4586; Pope's Dig., § 5672; A.S.A. 1947, § 12-1715.

21-6-503. Telephone service of summons or subpoena.

For service of a summons or subpoena on a witness or juror by telephone, a sheriff or other officer shall receive the amount actually paid by him or her for the use of the telephone and fifty cents (50¢) additional for each juror, witness, or other person so summoned or subpoenaed, without mileage or other charge.

History. Acts 1907, No. 260, § 2, p. 605; C. & M. Dig., § 4588; Pope's Dig., § 5676; A.S.A. 1947, § 12-1723.

21-6-504. Limitation on fees in criminal cases.

(a)(1) In criminal cases where the costs are paid by the county, no sheriff, coroner, constable, or other person serving subpoenas for witnesses shall be allowed to receive from the county pay for making more than two (2) returns on subpoenas in any given case.

(2) In no case shall either of the officers or other person charge or receive pay or mileage in serving any writ, process, or subpoena in a criminal case for more than the actual number of miles traveled.

(b) No clerk or magistrate shall receive pay from any county for the issuance of more than two (2) subpoenas in a criminal case.

History. Acts 1875, No. 77, §§ 20, 33, Dig., §§ 5677, 5689; A.S.A. 1947, §§ 12-167; C. & M. Dig., §§ 4589, 4600; Pope's 1724, 12-1732.

CASE NOTES

ANALYSIS

Mileage.
Service of subpoena.

Mileage.

When a sheriff arrests a person without a warrant or commitment and conveys him to the county jail, and the person arrested is subsequently indicted and convicted, the sheriff is entitled to no mileage in conveying him to jail. *McHenry v. Hot Spring County*, 57 Ark. 565, 22 S.W. 175 (1893).

When a sheriff arrests a defendant under one of four warrants in his hands, he is entitled to mileage on only one warrant. *McHenry v. Hot Spring County*, 57 Ark. 565, 22 S.W. 175 (1893).

Service of Subpoena.

"Return," as used in this section, does not mean "service," and the county is responsible, in cases for which it is liable to the sheriff, for every subpoena served, however numerous. *Phillips County v. Pillow*, 47 Ark. 404, 1 S.W. 686 (1886).

21-6-505. Expenses of keeping seized property.

The sheriff, constable, or other officer shall safely keep all property taken or seized under legal process and shall be allowed by the court the necessary expenses of doing so, to be paid by the plaintiff, and taxed in the cost.

History. Acts 1875, No. 77, § 21; C. & M. Dig., § 4590; Pope's Dig., § 5678; A.S.A. 1947, § 12-1725.

CASE NOTES

Storage Costs.

Where the sheriff, on execution, levied against several mobile homes and stored them on land of petitioners, who thereafter filed a motion to tax as costs of the original action the value of the storage and asked that it be assessed against the sheriff, the sheriff was entitled to protection of this section and a default judgment against him on contract theory was improper without notice to him. *Saxon v. Purma*, 256 Ark. 461, 508 S.W.2d 331 (1974).

Where landowner orally contracted with sheriff to store levied goods and later filed a motion to tax storage rent as costs against both the plaintiff and sheriff, it was error for the court to grant severance of claim against sheriff, to entertain action in contract, and to enter default judgment against sheriff since the motion to sever created a new and independent cause of action. *Saxon v. Purma*, 256 Ark. 461, 508 S.W.2d 331 (1974).

CHAPTER 7

ACCOUNTING AND REPORTING

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. STATE AND LOCAL OFFICERS — INCOME AND EXPENDITURES.
3. STATE OFFICERS — QUARTERLY REPORTS TO GOVERNOR.
4. PRINTING AND DISTRIBUTION OF STATE REPORTS.

RESEARCH REFERENCES

Am. Jur. 63C Am. Jur. 2d, Pub. Off.,
§ 263 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — STATE AND LOCAL OFFICERS — INCOME AND EXPENDITURES

SECTION.

- 21-7-201. Penalties.
- 21-7-202. Treasurer of State's fiscal responsibility.
- 21-7-203. Monthly reports by certain state officers — Disposition of funds.
- 21-7-204 — 21-7-206. [Repealed.]
- 21-7-207. Reports in case of vacancy in office.

SECTION.

- 21-7-208. Estimate of expenditures.
- 21-7-209. Credit for fees prohibited — Exception.
- 21-7-210. Records kept by officers.
- 21-7-211. Failure of officer to render and settle accounts.

Effective Dates. Acts 1875, No. 47, § 12: effective 30 days from passage.
Acts 2001, No. 854, § 2: July 1, 2001.
The emergency clause provided: "It is found and determined by the General Assembly that the state's fiscal year begins on July 1 of each year and that for the purposes of accounting and record keeping it is necessary that the changes to the

payment of fees by the Commissioner of State Lands made by this act be implemented on a date corresponding to the beginning of the start of the fiscal year. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2001."

21-7-201. Penalties.

- (a)(1) Any officer who shall refuse or neglect to keep a record complying in all particulars with the requirements of this subchapter or who shall refuse access to the record, within reasonable hours, to any officer by law entitled to inspect the same, or who shall neglect or refuse to make returns as provided in this subchapter shall be deemed guilty of malfeasance.
- (2) Upon conviction, he or she shall, for each such offense, be fined in any sum not less than one hundred dollars (\$100) and be removed from office.
- (b)(1) The writ of mandamus shall lie to compel the production to the proper officer of the records and reports prescribed in this subchapter.
- (2) Any officer who shall knowingly and willfully make a false report of the amount received or expended shall be deemed guilty of perjury and, upon conviction, shall suffer the penalties affixed by law thereto.

(c) Nothing contained in this section shall be construed to release the officer offending against the provisions of this subchapter from any liability upon his or her official bond, to exempt him or her from the operation of the provisions of Arkansas Constitution, Article 7, § 27, or to relieve him or her from prosecution and punishment for the crime of embezzlement.

History. Acts 1875, No. 47, § 9, p. 124; C. & M. Dig., § 4643; Pope's Dig., § 5732; A.S.A. 1947, § 12-1810.

21-7-202. Treasurer of State's fiscal responsibility.

The Treasurer of State shall be responsible for all moneys and evidences of value in his or her hands from fees and emoluments of office, in the same manner as for the other public moneys, and shall disburse the same only in such manner as may be prescribed by law.

History. Acts 1875, No. 47, § 3, p. 124; C. & M. Dig., § 4635; Pope's Dig., § 5724; A.S.A. 1947, § 12-1803. **Cross References.** State Treasury Management Law, § 19-3-501 et seq.

21-7-203. Monthly reports by certain state officers — Disposition of funds.

(a)(1) The Secretary of State, Auditor of State, and Commissioner of State Lands shall each render to the Treasurer of State, on the first day of each month, a statement of the amounts received by him or her from fees and emoluments of office during the month preceding.

(2) The officer shall, at the same time, deposit with the Treasurer of State the amounts in the identical pieces of money, or the evidence of value so received.

(3) The Treasurer of State shall render to the Auditor of State, in like manner in all respects, monthly statements in detail of the amounts by him or her directly received from fees and emoluments proper from the office of the Treasurer of State.

(b) The officers shall each incorporate in his or her regular report to the Governor, for transmission to the General Assembly, a classified statement of the sums received by him or her from fees and emoluments since the date of his or her last report.

History. Acts 1875, No. 47, § 2, p. 124; C. & M. Dig., § 4634; Pope's Dig., § 5723; A.S.A. 1947, § 12-1802.

21-7-204 — 21-7-206. [Repealed.]

Publisher's Notes. These sections, concerning annual reports, report and approval of expenditures, and disapproval of expenditures for local officers, were re-

pealed by Acts 1993, No. 1279, § 1. The sections were derived from the following sources:

21-7-204. Acts 1875, No. 47, § 5, p. 124;

C. & M. Dig., §§ 4637, 4638; Pope's Dig., §§ 5726, 5727; A.S.A. 1947, §§ 12-1805, 12-1806. 21-7-206. Acts 1875, No. 47, § 6, p. 124; C. & M. Dig., § 4640; Pope's Dig., § 5729; A.S.A. 1947, § 12-1808.

21-7-205. Acts 1875, No. 47, § 5, p. 124; C. & M. Dig., § 4639; Pope's Dig., § 5728; A.S.A. 1947, § 12-1807.

21-7-207. Reports in case of vacancy in office.

(a) In case any officer shall die or resign, or his or her office become otherwise vacated before the expiration of the full term, the report of the officer's receipts and expenditures as required pursuant to this subchapter shall immediately, upon such vacation, be rendered for that portion of the year during which the office was occupied by him or her.

(b) The net amount of money to be credited to such outgoing officer shall be proportioned at the rate of five thousand dollars (\$5,000) per year for the length of time he or she occupied the office.

(c) In case of death of an officer, the report and settlement as therein prescribed shall be made by his or her executor or administrator under the same penalties for refusal or neglect to render the report or for knowingly and willfully filing a false report as prescribed for an offending officer in § 21-7-201.

History. Acts 1875, No. 47, § 10, p. 124; C. & M. Dig., § 4644; Pope's Dig., § 5733; A.S.A. 1947, § 12-1811.

21-7-208. Estimate of expenditures.

(a)(1) Any officer coming within the purview of this subchapter may submit to the officer to whom he or she is required to make a report, as provided in this subchapter, an estimate of the amount of expenditures proposed.

(2) The officer making the expenditures shall, with his or her annual report, make a full statement of particulars and produce vouchers showing the manner of expenditure of the amount.

(b)(1) If the estimate is approved by the reviewing officer, no further approval of such amount shall be required.

(2) If any officer shall submit his or her estimate of expenditure as provided for in subsection (a) of this section, and the estimate shall not be approved, the officer shall have the same right of appeal from the decision as provided in § 21-7-206 [repealed].

History. Acts 1875, No. 47, § 8, p. 124; C. & M. Dig., § 4642; Pope's Dig., § 5731; A.S.A. 1947, § 12-1809.

21-7-209. Credit for fees prohibited — Exception.

(a)(1) Except as stated in subsections (b) and (c) of this section, no officer coming within the purview of this subchapter shall give credit to any person for fees or other emoluments or perquisites of his or her

office unless in cases where parties are permitted by law to give bond for costs and the bond has been given as prescribed by law.

(2) In case any such prohibited credit shall be given, the amount thereof shall be charged to the officer as cash.

(b) A public officer performing services for an agency of the State of Arkansas for which a fee is provided in § 21-6-307 or § 21-6-406 may extend credit to that agency provided that statements demanding payment are submitted on at least a quarterly basis.

(c)(1) Circuit court clerks and probate clerks of the circuit court, sheriffs, and other elected county officials are authorized to extend credit for the payment of court costs and fees to licensed attorneys, financial institutions, improvement districts, and state and federal agencies and may extend credit for payment of recording fees to the Commissioner of State Lands.

(2) Each official may establish policies within his or her office to implement the provisions of this section, which shall include a provision that withdraws this privilege from any person whose account remains past due and unpaid for thirty (30) days until the delinquent account is paid in full.

(d) When elected county officials are authorized to extend credit to attorneys or other persons or entities or agencies for court costs and fees and the official does so and is unable to collect such court costs or fees from the person, entity, or agency, the official shall not be personally liable for payment of such court costs and fees.

History. Acts 1875, No. 47, § 7, p. 124; C. & M. Dig., § 4641; Pope's Dig., § 5730; A.S.A. 1947, § 12-1736; Acts 1987, No. 720, § 1; 1989, No. 269, § 1; 1989, No. 871, § 1; 2001, No. 854, § 1.

Amendments. The 2001 amendment

added "and may extend credit for payment of recording fees to the Commissioner of State Lands" in (c)(1); and inserted "or her" in (c)(2).

Cross References. Pro rata division when full fees not collected, § 16-68-506.

21-7-210. Records kept by officers.

(a)(1) It shall be the duty of the Secretary of State, the Auditor of State, the Treasurer of State, and the Commissioner of State Lands, and of each officer of any county, city, town, or village receiving fees or emoluments of office to keep a record book in which shall be entered on each day an account of all moneys or other funds received by him or her in payment of fees or by way of emolument pertaining to his or her office.

(2) The record shall show in each instance by whom, on what account, and in what funds such payment was made.

(b)(1) The record book of fees of each of the state officers, as set forth in subsection (a) of this section, shall, at all times, be open to the inspection of the Governor and other state officers.

(2) The record book of each of the county officers proper shall, at all times, be open to the inspection of the judges of the circuit and county courts of the county.

(3) The record book of justices of the peace and constables shall, at all times, be open to the inspection of the judge of the county court of the county.

(4) The record book of each officer of any city, town, or village shall, at all times, be open to the inspection of the mayor or other chief officer of such city, town, or village.

History. Acts 1875, No. 47, §§ 1, 4, p. 124; C. & M. Dig., §§ 4633, 4636; Pope's Dig., §§ 5722, 5725; A.S.A. 1947, §§ 12-1801, 12-1804.

Cross References. Accounts of clerks of courts, § 16-20-106.

CASE NOTES

ANALYSIS

County clerks.
Official liability.

County Clerks.

Fees and emoluments of the county clerk are public funds and it is his duty to report them to the court and to pay into the county treasury all except his statutory compensation. *Marable v. State*, 175 Ark. 589, 2 S.W.2d 690 (1928).

Official Liability.

Neglect of the duty imposed by this section does not render an official liable irrespective of his good faith. *White v. Williams*, 192 Ark. 41, 89 S.W.2d 927 (1936).

Cited: *Williams v. Buchanan*, 86 Ark. 259, 110 S.W. 1024 (1908).

21-7-211. Failure of officer to render and settle accounts.

If any collector, sheriff, clerk, or other officer shall willfully neglect or refuse to render his or her accounts and settle with the county court for moneys received by him or her, or which he or she ought to have received, to the use of the county, in the manner and at the time prescribed by this subchapter or shall render a false account, he or she shall be deemed guilty of a misdemeanor in office and shall be proceeded against accordingly.

History. Rev. Stat., ch. 41, § 36; C. & M. Dig., § 2816; Pope's Dig., § 3534; A.S.A. 1947, § 12-1812.

Penalty for failure to pay amount due on settlement, § 26-39-213.

Cross References. Collector's settlements with county court, § 26-39-201.

SUBCHAPTER 3 — STATE OFFICERS — QUARTERLY REPORTS TO GOVERNOR

SECTION.

21-7-301. Quarterly statements by certain state officers.

21-7-302. Quarterly statement by Auditor of State.

21-7-303. Statement to be public record — Investigation of deficits.

Cross References. Biennial report of Auditor of State, § 25-16-513.

Effective Dates. Acts 1883, No. 119, § 4: effective on passage.

21-7-301. Quarterly statements by certain state officers.

On the first day of January, March, July, and October, it shall be the duty of the Treasurer of State, the Secretary of State, and the Commissioner of State Lands to file with the Governor a sworn statement, in tabulated form, showing:

(1) The balances that the officers were chargeable with on account of the several funds;

(2) All amounts received by the officers during the quarter last past, and the several funds on account of which the same have been received; and

(3) An itemized statement of all expenditures and disbursements made by the officers, and on what account the same have been made during the quarter.

History. Acts 1883, No. 119, § 1, p. 296; C. & M. Dig., § 8086; Pope's Dig., § 10424; A.S.A. 1947, § 12-1901.

Quarterly reports of Treasurer of State as to money from sale of state lands, § 25-16-611.

Cross References. Commissioner of State Lands to make quarterly reports to Auditor of State, § 22-6-101.

21-7-302. Quarterly statement by Auditor of State.

It shall be the duty of the Auditor of State, on the first day of January, March, July, and October to file with the Governor a report and statement showing:

(1) The different amounts of money which, during the preceding quarter, have been charged upon his or her books to the various fiscal officers of the state;

(2) What disbursements or settlements during the quarter have been made by him or her; and

(3) In what manner the disbursements or settlements have been made.

History. Acts 1883, No. 119, § 2, p. 296; C. & M. Dig., § 8087; Pope's Dig., § 10425; A.S.A. 1947, § 12-1902.

Cross References. Quarterly reports of money in hands of Treasurer of State, § 25-16-514.

21-7-303. Statement to be public record — Investigation of deficits.

(a) The statements provided for in this subchapter, when so filed with the Governor, shall remain in his or her hands as public records, subject to inspection upon proper application.

(b) Copies of the statements shall be embraced in or accompany the Governor's message to the General Assembly.

(c) Whenever a deficit occurs in the reports, it shall be the Governor's duty to order through the Attorney General an immediate investigation and, if necessary, to order suit brought against the parties whose report shows the deficit.

History. Acts 1883, No. 119, § 3, p. 296; C. & M. Dig., §§ 8088, 8089; Pope's Dig., §§ 10426, 10427; A.S.A. 1947, § 12-1903.

SUBCHAPTER 4 — PRINTING AND DISTRIBUTION OF STATE REPORTS

SECTION.

21-7-401. Biennial reports of Treasurer of State and Department of Finance and Administration.

SECTION.

21-7-402. Annual and biennial reports.

Cross References. Distribution of state publications, § 25-18-202 et seq.

Effective Dates. Acts 1943, No. 204, § 3: effective on passage.

21-7-401. Biennial reports of Treasurer of State and Department of Finance and Administration.

(a)(1) The only biennial reports which shall be printed and distributed shall be the biennial reports of the Treasurer of State and the Department of Finance and Administration.

(2) These reports shall be distributed to the constitutional officers of the state, and upon request, to members of the General Assembly.

(3) Copies shall be available for distribution to the general public upon written request.

(b) In addition to the financial statements and tables required to be published in the report, the department shall be required to summarize briefly all of the financial affairs of each state-supported institution or department and to publish the summaries in its biennial report to the constitutional officers of the state.

History. Acts 1943, No. 204, § 2; 1981, No. 241, § 1; A.S.A. 1947, § 12-1907.

CASE NOTES

Cited: *Andres v. First Ark. Dev. Fin. Corp.*, 230 Ark. 594, 324 S.W.2d 97 (1959).

21-7-402. Annual and biennial reports.

(a) Whenever the laws of this state require any state agency, department, board, or commission to prepare and publish an annual or biennial report, the report shall be prepared in the least expensive manner possible.

(b) Fifty (50) copies shall be filed with the Arkansas State Library, and twenty (20) copies shall be filed with the Mullins Library of the University of Arkansas at Fayetteville, as required by law, for distribution purposes.

(c) The publication and filing of such reports in the manner provided in this section shall constitute sufficient distribution, in lieu of other distribution requirements which may be prescribed by law, provided:

(1) A record or list of reports available at the Arkansas State Library shall be distributed every three (3) months to the appropriate parties, including members of the General Assembly or other public officials who may be designated by law to receive copies thereof. The furnishing of the lists or record shall meet the formalities of any statutory requirements specifying which officials shall receive copies of the reports;

(2) Copies of the reports shall be made available to the maximum extent practicable, upon request therefor, but the Arkansas State Library may provide, by rules and regulations, for recovery of the costs of reproduction.

History. Acts 1981, No. 241, § 2; and local publications to Arkansas State A.S.A. 1947, § 12-1908.

Cross References. Furnishing state

CHAPTER 8

ETHICS AND CONFLICTS OF INTEREST

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. INCOME DISCLOSURE BY SALARIED EMPLOYEES.
3. CODE OF ETHICS.
4. DISCLOSURE BY LOBBYISTS AND STATE AND LOCAL OFFICIALS — GENERAL PROVISIONS.
5. DISCLOSURE BY LOBBYISTS AND STATE AND LOCAL OFFICIALS — INVESTIGATION BY ATTORNEY GENERAL. [REPEALED.]
6. DISCLOSURE BY LOBBYISTS.
7. DISCLOSURE BY STATE AND LOCAL OFFICIALS — STATEMENT OF FINANCIAL INTEREST.
8. DISCLOSURE BY STATE AND LOCAL OFFICIALS — CONFLICT OF INTEREST.
9. DISCLOSURE BY LEGISLATORS — SALES TO THE STATE.
10. STATE BOARDS, COMMISSIONS, AND ENTITIES RECEIVING STATE FUNDS.

A.C.R.C. Notes. References to “this chapter” in subchapters 2-8 may not apply to subchapters 1, 9, and 10, which were enacted subsequently.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of state constitutional or statutory provision regarding nepotism in the public service. 11 ALR 4th 826.

Orders and enactments requiring public

officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 ALR 4th 237.

Am. Jur. 63C Am. Jur. 2d, Pub. Off., § 247 et seq.

Ark. L. Notes. Leflar, The Reform of Ethics Rules In Arkansas Government, 2000 Ark. L. Notes 65.

C.J.S. 67 C.J.S., Officers, § 243 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.
21-8-101. Nepotism.

A.C.R.C. Notes. References to “this chapter” in subchapters 2-8 may not apply to this subchapter, which was enacted subsequently.
Acts 2001, No. 1572, § 7, provided: “ADVERTISING. No advertising targeting the prevention or reduction of tobacco

use shall include the name, voice, or likeness of any elected official or their immediate family.”
Cross References. Certain ethical guidelines and prohibitions for educational administrators, employees, and board members, § 6-64-101 et seq.

21-8-101. Nepotism.

- (a) A person who is related within the second degree, by consanguinity or affinity, to a member or employee of a state board or commission shall not be eligible for appointment as a member of the board.
- (b) A person who is related within the second degree, by consanguinity or affinity, to a member of a state board or commission shall not be eligible for employment by the board or commission.
- (c) This section shall apply only to persons hired or appointed after July 28, 1995.

History. Acts 1995, No. 1123, § 3.

SUBCHAPTER 2 — INCOME DISCLOSURE BY SALARIED EMPLOYEES

SECTION.
21-8-201. Definitions.
21-8-202. Penalty.
21-8-203. Disclosure of income required.

SECTION.
21-8-204. Filing of income disclosure statement.

21-8-201. Definitions.

- For the purposes of this subchapter:
- (1) “Public agency” shall include:
- (A) The agency with which a state employee is employed, a state board, commission, institution, office, or agency;
- (B) Any city, county, or school district, or any agency, division, or instrumentality thereof, including those agencies, divisions, or instrumentalities which are funded in part with funds provided by state appropriations; or

(C) Any area or regional program in this state which derives financial support in whole or in part from state funds or from any nonprofit corporation, foundation, or organization; and

(2)(A) "Regular salary basis" means employment in a full-time position for which a maximum regular salary is established by law.

(B) "Regular salary basis" shall also include:

(i) In the case of the institutions of higher learning, any person employed on a contract basis for nine (9) months or more of services where the maximum regular salary is established by law; and

(ii) Regular salaries paid from funds deposited in the State Treasury or from bank funds belonging to the state agency, or from federal funds, trust funds, grant funds, donated funds, or other funds of whatever nature administered by the state agency.

History. Acts 1977, No. 849, § 2;
A.S.A. 1947, § 12-1629.

21-8-202. Penalty.

(a) Any employee of the State of Arkansas, including employees of the state-supported institutions of higher learning, who fails to file, or who shall falsely file, any statement as required under the provisions of this subchapter, shall be guilty of a misdemeanor.

(b) Upon conviction, he or she shall be fined in an amount not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500).

History. Acts 1977, No. 849, § 5;
A.S.A. 1947, § 12-1632.

21-8-203. Disclosure of income required.

The General Assembly determines that it is essential to the efficient operation of government, and to minimize the opportunities for conflicts of interest, that all state employees who are employed on a regular salary basis shall be required to disclose each source of income in excess of five hundred dollars (\$500) earned during any calendar year from sources other than their regular salary from employment or from professional or consultant services rendered for any public agency.

History. Acts 1977, No. 849, § 1;
A.S.A. 1947, § 12-1628.

CASE NOTES

Evidence.

A judge violated Canon 4 of the Code of Judicial Conduct, this section and § 21-8-204(b)(1) by failing to properly report his outside income and financial interests to

the clerk of the Arkansas Supreme Court and the Secretary of State. *Judicial Discipline & Disability Comm'n v. Thompson*, 341 Ark. 253, 16 S.W.3d 212 (2000).

21-8-204. Filing of income disclosure statement.

(a) On or before January 31 following the close of each calendar year, all state employees who are employed by a state office, agency, department, board, commission, or institution of higher learning in this state on a regular salary basis shall file a statement under oath reflecting all income in excess of five hundred dollars (\$500) received by them during the preceding calendar year as wages or salary or as fees or payments for professional or consultant services rendered to any public agency of this state, other than the salary said person receives on a regular salary basis.

(b)(1) All state employees who are employed by any state office, agency, department, board, or commission, other than employees of institutions of higher learning, shall file the statement required herein with the Secretary of State.

(2)(A) All employees of institutions of higher learning in the state shall file the statement with the president of the institution of higher learning by which the employee is employed.

(B) All such statements filed with the presidents of the various institutions of higher learning shall be public records and shall be open to public inspection during reasonable business hours.

History. Acts 1977, No. 849, §§ 3, 4;
A.S.A. 1947, §§ 12-1630, 12-1631.

CASE NOTES

Evidence.

A judge violated Canon 4 of the Code of Judicial Conduct, § 21-8-203 and this section by failing to properly report his outside income and financial interests to the

clerk of the Arkansas Supreme Court and the Secretary of State. *Judicial Discipline & Disability Comm'n v. Thompson*, 341 Ark. 253, 16 S.W.3d 212 (2000).

SUBCHAPTER 3 — CODE OF ETHICS

SECTION.

21-8-301. Definitions.

21-8-302. Penalties.

21-8-303. Enforcement.

SECTION.

21-8-304. Prohibited activities.

21-8-305 — 21-8-309. [Repealed.]

Effective Dates. Acts 2001, No. 1839, § 35: became law without governor's signature Apr. 20, 2001. Emergency clause provided: "It is found and determined by the General Assembly that various provisions of the Arkansas Code relating to campaign financing and ethics are vague or otherwise in need of modification; that this act accomplishes those purposes; and that this act should go into effect as soon as possible so that those persons who are subject to the provisions of the various

ethics and campaign finance statutes receive the benefit of the clarifications as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If

the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Cross References. Code of ethics, public procurements, § 19-11-701 et seq.

21-8-301. Definitions.

In this subchapter:

(1)(A) "Financial interest" means notes, stock certificates, bonds, contracts, or other evidence of ownership interest in any firm, corporation, or enterprise.

(B) "Financial interest" does not mean demand deposits, time deposits, or other types of deposits that do not vest any ownership interest in any firm, corporation, or enterprise;

(2) "Regulatory agency" means any state board, commission, department, or officer authorized by law to make rules or to adjudicate contested cases except those in the legislative or judicial branches; and

(3) "State employee" means all employees of the State of Arkansas employed on a full-time or part-time basis.

History. Acts 1979, No. 570, § 1;
A.S.A. 1947, § 12-3001.

21-8-302. Penalties.

(a) Any person who knowingly or willfully fails to file any report pursuant to this subchapter or files an incomplete or inaccurate report or otherwise violates any provision of this subchapter shall be guilty of a Class B misdemeanor.

(b) In addition, any person who shall willfully conceal or fail to disclose any information which, by the provisions of this subchapter, is required to be disclosed and filed with the appropriate official as required by this subchapter shall be guilty of malfeasance in office or position of employment and shall be removed therefrom.

History. Acts 1979, No. 570, § 7; A.S.A.
1947, § 12-3007.

Cross References. Fines, § 5-4-201.
Imprisonment, § 5-4-401.

21-8-303. Enforcement.

(a)(1) It shall be the duties and responsibilities of the prosecuting attorneys of this state to supervise compliance with this subchapter and to prosecute persons who violate the provisions of this subchapter.

(2) However, the Arkansas Ethics Commission shall also have authority to investigate and address alleged violations of this subchapter.

(b)(1) In the event the prosecuting attorney shall fail or refuse to enforce the provisions of this subchapter when the facts are known by him or her, or called to his or her attention, any citizen of this state may bring action in circuit court to force compliance with this subchapter.

(2) The citizen shall be entitled to receive reimbursements for expenses and reasonable attorney's fees upon the successful outcome of such litigation.

History. Acts 1979, No. 570, § 7; A.S.A. 1947, § 12-3007; Acts 1999, No. 553, § 30.

Amendments. The 1999 amendment added the proviso in (a).

21-8-304. Prohibited activities.

(a) No public official or state employee shall use or attempt to use his or her official position to secure special privileges or exemption for himself or herself or his or her spouse, child, parents, or other persons standing in the first degree of relationship, or for those with whom he or she has a substantial financial relationship that is not available to others except as may be otherwise provided by law.

(b) No public official or state employee shall accept employment or engage in any public or professional activity while serving as a public official which he or she might reasonably expect would require or induce him or her to disclose any information acquired by him or her by reason of his or her official position which is declared by law or regulation to be confidential.

(c) No public official or state employee shall disclose any such information gained by reason of his or her position, nor shall he or she otherwise use such information for his or her personal gain or benefit.

History. Acts 1979, No. 570, §§ 3, 4; A.S.A. 1947, §§ 12-3003, 12-3004; Acts 2001, No. 1839, § 22.

A.C.R.C. Notes. Subchapter 10 of this chapter supplements this section.

Amendments. The 2001 amendment, in (a), substituted "use or attempt to use

his or her official" for "use his" and inserted "or herself"; and made minor punctuation and gender neutral changes.

Cross References. State Boards and Commissions, § 21-8-1001 et seq.

Applicability of this section, § 6-43-114.

RESEARCH REFERENCES

Ark. L. Notes. Leflar, *The Reform of Ethics Rules In Arkansas Government*, 2000 Ark. L. Notes 65.

21-8-305 — 21-8-309. [Repealed.]

Publisher's Notes. Former §§ 21-8-305 — 21-8-309, concerning filing required and exceptions, time and place of filing, public records, contents, and notification of failure to file of financial disclosure statements, were repealed by Acts 1999, No. 553, §§ 31-35. The sections were derived from the following sources:

21-8-305. Acts 1979, No. 570, § 2; A.S.A. 1947, § 12-3002; Acts 1989, No. 719, § 5; 1991, No. 326, § 2.

21-8-306. Acts 1991, No. 326, § 2.

21-8-307. Acts 1991, No. 326, § 2.

21-8-308. Acts 1991, No. 326, § 2.

21-8-309. Acts 1991, No. 326, § 2.

SUBCHAPTER 4 — DISCLOSURE BY LOBBYISTS AND STATE AND LOCAL OFFICIALS — GENERAL PROVISIONS

SECTION.

- 21-8-401. Title.
- 21-8-402. Definitions.
- 21-8-403. Penalty.
- 21-8-404. Investigation generally.

SECTION.

- 21-8-405. Provisions supplemental.
- 21-8-406. Tickets to charitable events.
- 21-8-407. Gifts of art.

A.C.R.C. Notes. References to “this subchapter” in §§ 21-8-401 — 21-8-406 may not apply to § 21-8-407 which was enacted subsequently.

Effective Dates. Init. Meas. 1988, No. 1, § 1: Jan. 1, 1989.

Acts 2001, No. 1839, § 35: became law without governor’s signature. Approved Apr. 20, 2001. Emergency clause provided: “It is found and determined by the General Assembly that various provisions of the Arkansas Code relating to campaign financing and ethics are vague or otherwise in need of modification; that this act accomplishes those purposes; and that this act should go into effect as soon as possible so that those persons who are

subject to the provisions of the various ethics and campaign finance statutes receive the benefit of the clarifications as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

RESEARCH REFERENCES

Am. Jur. 51 Am. Jur. 2d, Lobby, § 1 et seq.

UALR L.J. Survey, Miscellaneous, 12 UALR L.J. 653.

21-8-401. Title.

Subchapters 4, 5 [repealed], and 6-8 of this chapter may be referred to and cited as “The Disclosure Act for Lobbyists and State and Local Officials”.

History. Init. Meas. 1988, No. 1, § 1; Acts 1989, No. 719, § 1.

21-8-402. Definitions.

As used in this subchapter and §§ 21-8-601 et seq., 21-8-701 et seq., and 21-8-801 et seq., unless the context otherwise requires:

(1)(A) “Administrative action” means any decision on, or proposal, consideration, or making of any rule, regulation, ratemaking proceeding, or policy action by a governmental body.

(B) “Administrative action” does not include ministerial action;

(2) “Business” means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-em-

played individual, receivership, trust, or any legal entity through which business is conducted;

(3) "County government" means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of a county;

(4) "Family" means an individual's spouse, children of that individual or his or her spouse, or brothers, sisters, or parents of the individual or his or her spouse;

(5)(A) "Gift" means any payment, entertainment, advance, services, or anything of value, unless consideration of equal or greater value has been given therefor.

(B) The term "gift" does not include:

(i)(a) Informational material such as books, reports, pamphlets, calendars, or periodicals informing a public servant regarding his or her official duties.

(b) Payments for travel or reimbursement for any expenses are not informational material;

(ii) The giving or receiving of food, lodging, or travel which bears a relationship to the public servant's office and when appearing in an official capacity;

(iii) Gifts which are not used and which, within thirty (30) days after receipt, are returned to the donor;

(iv) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any of these persons, unless the person is acting as an agent or intermediary for any person not covered by this subdivision (5)(B)(iv);

(v) Campaign contributions;

(vi) Any devise or inheritance;

(vii)(a) Anything with a value of one hundred dollars (\$100) or less.

(b) The value of an item shall be considered to be less than one hundred dollars (\$100) if the public servant reimburses the person from whom the item was received any amount over one hundred dollars (\$100) and the reimbursement occurs within ten (10) days from the date the item was received;

(viii) Wedding presents and engagement gifts;

(ix) A monetary or other award presented to an employee of a public school district, the Arkansas School for the Blind, the Arkansas School for the Deaf, the Arkansas School for Mathematics, Science, and the Arts, a university, a college, a technical college, a technical institute, a comprehensive life-long learning center, or a community college in recognition of the employee's contribution to education;

(x) Tickets to charitable fund-raising events held within this state by a nonprofit organization which is exempt from taxation under § 501(c)(3) of the Internal Revenue Code;

(xi) A personalized award, plaque, or trophy with a value of one hundred and fifty dollars (\$150) or less;

(xii) An item which appointed or elected members of a specific governmental body purchase with their own personal funds and present to a fellow member of that governmental body in recognition of public service;

(xiii) Food or beverages provided at a conference-scheduled event that is part of the program of the conference;

(xiv) Food or beverages provided in return for participation in a bona fide panel, seminar, or speaking engagement at which the audience is a civic, social, or cultural organization or group; and

(xv)(a) A monetary or other award publicly presented to an employee of state government in recognition of his or her contributions to the community and State of Arkansas when the presentation is made by the employee's supervisors or peers, individually or through a nonprofit organization which is exempt from taxation under § 501(c) of the Internal Revenue Code, and the employee's receipt of the award would not result in or create the appearance of the employee using his or her position for private gain, giving preferential treatment to any person, or losing independence or impartiality.

(b) The exception in subdivision (5)(B)(xv)(a) of this section shall not apply to an award presented to an employee of state government by a person having economic interests which may be affected by the performance or nonperformance of the employee's duties or responsibilities.

(6) "Governmental body" means any office, department, commission, council, board, committee, legislative body, agency, or other establishment of the executive, judicial, or legislative branch of the state, municipality, county, school district, improvement district, or any political district or subdivision thereof;

(7)(A) "Income" or "compensation" means any money or anything of value received or to be received as a claim for future services, whether in the form of a retainer, fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, or any other form of recompense or any combination thereof. It includes a payment made under obligation for services or other value received.

(B) The term "compensation" does not include anything of value presented to an employee of a public school district, the Arkansas School for the Blind, the Arkansas School for the Deaf, the Arkansas School for Mathematics and Sciences, a university, a college, a technical college, a technical institute, a comprehensive life-long learning center, or a community college in recognition of the employee's contribution to education;

(8) "Legislative action" means introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto, or any other official action or nonaction on any bill, ordinance, law, resolution, amendment, nomination, appointment, report, or other matter pending or proposed before a committee or house of the General Assembly, a quorum court, or a city council or board of directors of a municipality;

(9) “Legislator” means any person who is a member of the General Assembly, a quorum court of any county, or the city council or board of directors of any municipality;

(10) “Lobbying” means communicating directly or soliciting others to communicate with any public servant with the purpose of influencing legislative action or administrative action;

(11) “Lobbyist” means a person who:

(A) Receives income or reimbursement in a combined amount of four hundred dollars (\$400) or more in a calendar quarter for lobbying one (1) or more governmental bodies;

(B) Expends four hundred dollars (\$400) or more in a calendar quarter for lobbying one (1) or more governmental bodies, excluding the cost of personal travel, lodging, meals, or dues; or

(C) Expends four hundred dollars (\$400) or more in a calendar quarter, including postage, for the express purpose of soliciting others to communicate with any public servant to influence any legislative action or administrative action of one (1) or more governmental bodies unless the communication has been filed with the Secretary of State or the communication has been published in the news media. If the communication is filed with the Secretary of State, the filing shall include the approximate number of recipients;

(12) “Municipal government” means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of a municipality;

(13) “Official capacity” means activities which:

(A) Arise solely because of the position held by the public servant;

(B) Would be subject to expense reimbursement by the agency with which the public servant is associated;

(C) Involve matters which fall within the official responsibility of the public servant;

(14) “Person” means a business, individual, corporation, union, association, firm, partnership, committee, club, or other organization or group of persons;

(15)(A) “Public appointee” means an individual who is appointed to a governmental body.

(B) “Public appointee” shall not include an individual appointed to an elective office;

(16)(A) “Public employee” means an individual who is employed by a governmental body or who is appointed to serve a governmental body.

(B) “Public employee” shall not include public officials or public appointees;

(17) “Public official” means a legislator or any other person holding an elective office of any governmental body, whether elected or appointed to the office, and shall include such persons during the time period between the date they were elected and the date they took office;

(18) “Public servant” means all public officials, public employees, and public appointees;

(19) "Registered lobbyist" means a lobbyist registered pursuant to the provisions of this subchapter and §§ 21-8-601 et seq., 21-8-701 et seq., and 21-8-801 et seq.;

(20) "Special event" means a planned activity to which a specific governmental body or identifiable group of public servants is invited; and

(21) "State government" means any office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of the State of Arkansas.

History. Init. Meas. 1988, No. 1, § 1; Acts 1989, No. 719, § 1; 1999, No. 553, §§ 36, 37; 2001, No. 239, § 1; 2001, No. 1192, §§ 1, 2; 2001, No. 1839, §§ 23-26.

A.C.R.C. Notes. The amendment of § 21-8-402(5)(B) by Acts 2001, No. 1192, § 1, and Acts 2001, No. 1839, § 23, conflicted.

Under the provisions of § 1-2-207(b), Act 1839 was the last enactment, and the amendment of § 21-8-402(5)(B) by Act 1839, § 23, prevails over the amendment of § 21-8-402(5)(B) by Act 1192, § 1. Act 1192, § 1 provided:

"Arkansas Code 21-8-402(5)(B), which provides the definition of gift for the purpose of ethics provisions, is amended to read as follows:

"(B) The term 'gift' does not include:

"(i)(a) Informational material such as books, reports, pamphlets, calendars, or periodicals informing a public servant regarding his or her official duties;

"(b) Payments for travel or reimbursement for any expenses are not informational material;

"(ii) The giving or receiving of food, lodging, or travel that bears a relationship to the public servant's office and when appearing in an official capacity;

"(iii) Gifts that are not used and that within thirty (30) days after receipt are returned to the donor;

"(iv) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-

law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any of these persons, unless the person is acting as an agent or intermediary for any person not covered by this subdivision (5)(B)(iv);

"(v) Campaign contributions;

"(vi) Any devise or inheritance;

"(vii) Anything with a value of one hundred dollars (\$100) or less;

"(viii) Wedding presents; or

"(ix) Anything of value presented to an employee of a public school district, the Arkansas School for the Blind, the Arkansas School for the Deaf, the Arkansas School for Mathematics and Science, a university, a college, a technical college, a technical institute, a comprehensive life-long learning center, or a community college in recognition of the employee's contribution to education;"

Amendments. The 1999 amendment rewrote (5)(B)(vii); added (5)(B)(viii); and added the language beginning with "and shall include such persons" in (16).

The 2001 amendment by No. 239 inserted present (13) and renumbered the remaining subdivisions accordingly.

The 2001 amendment by Nos. 1192 and 1839 rewrote (7).

The 2001 amendment by No. 1839 rewrote (5)(B); in (11)(A)-(C), substituted "four hundred dollars (\$400)" for "two hundred fifty dollars (\$250)"; added present (20); and made stylistic changes.

21-8-403. Penalty.

(a) Any person who violates any provision of subchapters 4, 5 [repealed], and 6-8 of this chapter shall be deemed guilty of a Class A misdemeanor.

(b) The culpable mental state required shall be a purposeful violation.

History. Init. Meas. 1988, No. 1, § 1;
Acts 1989, No. 719, § 1.

21-8-404. Investigation generally.

The prosecuting attorney of the district where an alleged violation occurred shall have the authority to investigate the alleged violations of this chapter.

History. Init. Meas. 1988, No. 1, § 1; Acts 1989, No. 719, § 1. **Cross References.** Arkansas Ethics Commission, § 7-6-217.

21-8-405. Provisions supplemental.

Subchapters 4, 5 [repealed], and 6-8 of this chapter shall be supplemental to all other laws pertaining to ethics, conflicts of interest, and shall not repeal any other laws, except for laws specifically repealed by subchapters 4, 5 [repealed], and 6-8 of this chapter.

History. Init. Meas. 1988, No. 1, § 1;
Acts 1989, No. 719, § 1.

21-8-406. Tickets to charitable events.

For the purposes of this subchapter and Subchapters 6-8 of this chapter, the value of a ticket to a charitable event shall not include the tax deductible portion of the ticket.

History. Acts 1997, No. 117, § 1.

21-8-407. Gifts of art.

Any work of art contracted for prior to January 1, 1998, for public service recognition for members of the General Assembly shall not be a gift under § 21-8-402 nor shall it be deemed an unlawful gift under any other statute or regulation.

History. Acts 2001, No. 1839, § 33. may not apply to this section which was
A.C.R.C. Notes. References to “this enacted subsequently.
subchapter” in §§ 21-8-401 — 21-8-406

SUBCHAPTER 5 — DISCLOSURE BY LOBBYISTS AND STATE AND LOCAL OFFICIALS — INVESTIGATION BY ATTORNEY GENERAL

SECTION.
21-8-501 — 21-8-503. [Repealed.]

21-8-501 — 21-8-503. [Repealed.]

Publisher’s Notes. This subchapter was repealed by Initiated Measure 1990, No. 1, § 7. The subchapter was derived from:
21-8-501. Init. Meas. 1988, No. 1, § 1.
21-8-502. Init. Meas. 1988, No. 1, § 1.
21-8-503. Init. Meas. 1988, No. 1, § 1.
For present law, see §§ 7-6-217 and 7-6-218.

SUBCHAPTER 6 — DISCLOSURE BY LOBBYISTS

SECTION.

21-8-601. Registration required — Exceptions — Termination.

21-8-602. Other filings required.

21-8-603. Activity reports — Inspection.

21-8-604. Activity reports — Required contents.

SECTION.

21-8-605. Records.

21-8-606. Duties of public officials.

21-8-607. Prohibited acts.

Effective Dates. Init. Meas. 1988, No. 1, § 1: Jan. 1, 1989.

Init. Meas. 1990, No. 1, §§ 7, 9: July 1, 1991.

Acts 2001, No. 1839, § 35: became law without governor's signature. Approved Apr. 20, 2001. Emergency clause provided: "It is found and determined by the General Assembly that various provisions of the Arkansas Code relating to campaign financing and ethics are vague or otherwise in need of modification; that this act accomplishes those purposes; and that this act should go into effect as soon as possible so that those persons who are subject to the provisions of the various

ethics and campaign finance statutes receive the benefit of the clarifications as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 51 Am. Jur. 2d, Lobby, § 1 et seq.

UALR L.J. Survey, Miscellaneous, 12 UALR L.J. 653.

21-8-601. Registration required — Exceptions — Termination.

(a)(1) A lobbyist shall register within five (5) days after beginning lobbying. Such registration shall be on forms provided by the Secretary of State containing the following information:

(A) The name, address, and telephone number of the lobbyist;

(B) The calendar year for which the lobbyist is registering;

(C) The name, address, and telephone number of the lobbyist's client or employer;

(D) A description of the nature of the lobbyist's client or employer; and

(E) Certification by the lobbyist that the information contained on the lobbyist registration form is true and correct.

(2) A lobbyist shall not be required to register if he or she engages in no lobbying other than the following activities:

(A) The publishing or broadcasting, by news media executives or their employees or agents, in the ordinary course of business, of news items, editorials, or other comments or paid advertisements which directly or indirectly urge legislative action or administrative action;

(B) Engaging in lobbying exclusively on behalf of an Arkansas church which qualifies as a tax exempt organization under § 501(c)(3) of the Internal Revenue Code when lobbying solely for the purpose of protecting the rights of members or adherents to practice the religious doctrines of the church;

(C)(i) Action in a person's official capacity as a public servant.

(ii) However, a public servant shall be required to register as a lobbyist if he or she:

(a) Receives income from a nongovernmental person in excess of four hundred dollars (\$400) in a quarter for lobbying; or

(b) Expends or is reimbursed in excess of four hundred dollars (\$400), regardless of the source, in a quarter for lobbying, excluding the cost of informational material and personal travel, lodging, meals, and dues;

(D) Drafting legislation;

(E) Appearing in:

(i) A judicial proceeding;

(ii) A proceeding or hearing if the appearance is a matter of public record; or

(iii) Any hearing or appeal proceeding conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(F) Assisting an executive agency, at the written request of the agency, in drafting administrative regulations or in publicizing or assisting in the implementation of final administrative actions;

(G) Testifying as an individual at a public hearing in support of or in opposition to legislation or administrative action, testifying on behalf of a corporation, partnership, association, or other organization with which the person is regularly associated as an employee, officer, member, or partner, or testifying at the request of a legislative committee; or

(H) Actions by contractors or employees of contractors while engaged in selling to a governmental body by demonstrating or describing commodities or services or inquiring as to specifications or terms and conditions of a particular purchase unless such contractor or its employees expend in excess of four hundred dollars (\$400) in a calendar quarter for food, lodging, travel, or gifts to benefit public servants who purchase commodities or services on behalf of a governmental body.

(3) A person whose only act of lobbying is to compensate or reimburse a registered lobbyist in the person's behalf shall not be required to register as a lobbyist.

(b) Upon the termination of a registered lobbyist's employment or designation as a lobbyist, the termination shall be conveyed by the registered lobbyist in writing to the public official with whom the lobbyist is registered. The written notice of termination shall:

(1) State the registered lobbyist's name;

(2) State the date the registered lobbyist's employment is terminated or his or her designation as a lobbyist terminated; and

(3) Report any activity to be reported during the period in which the registration was in effect that has not already been reported.

(c) Each registered lobbyist whose employment or designation as a lobbyist has not terminated shall reregister by January 15 of each year.

History. Init. Meas. 1988, No. 1, § 1; Acts 1989, No. 719, § 2; 2001, No. 1839, § 27.

Amendments. The 2001 amendment added the last sentence in (a)(1); added (a)(1)(A) through (a)(1)(E); substituted “four hundred dollars \$(400)” for “two hundred fifty dollars (\$250)” in (a)(2)(C)(ii)(a), (a)(2)(C)(ii)(b) and

(a)(2)(H); added the last sentence to (b); and added (b)(1) through (b)(3).

U.S. Code. Section 501(c)(3) of the Internal Revenue Code, referred to in this section, is codified as 26 U.S.C. § 501(c)(3).

Cross References. Preparation of General Assembly bills, resolutions, and amendments, § 10-2-501.

21-8-602. Other filings required.

(a) A lobbyist who lobbies public servants of state government shall register and make other filings with the Secretary of State.

(b) A lobbyist who lobbies public servants of municipal government shall register and make other filings with the city clerk or recorder of the municipality, as the case may be.

(c) A lobbyist who lobbies public servants of county government or any government body not otherwise covered by this section shall register and make other filings with the county clerk of the county.

(d) A lobbyist who lobbies public servants of a governmental body covering a district which includes all or part of more than one (1) county shall file with the Secretary of State and the county clerk of his or her principal place of business or residence within the state.

(e) A lobbyist who would be required to register and file with more than one (1) public official under this section may, in lieu of registering with each public official, register and make other filings with the Secretary of State and the county clerk of his or her principal place of business or residence within the state.

History. Init. Meas. 1988, No. 1, § 1; Acts 1989, No. 719, § 2.

21-8-603. Activity reports — Inspection.

(a)(1) Within fifteen (15) days after the end of each calendar quarter, each registered lobbyist shall file a complete and detailed statement, signed and sworn to, concerning his or her lobbying activities during the previous calendar quarter.

(2)(A) A registered lobbyist who lobbies members of the General Assembly shall file a monthly lobbyist activity report, signed and sworn to, for any month in which the General Assembly is in session. A quarterly report is not required if the registered lobbyist has filed monthly lobbyist activity reports for each month of the calendar quarter.

(B) The monthly lobbyist activity report shall be filed within ten (10) days after the end of each month.

(b) Lobbyist activity reports shall be open to public inspection.

History. Init. Meas. 1988, No. 1, § 1; in (a)(2)(A), substituted “A” for “In addition to the quarterly lobbyist activity report, a” and added the last sentence.
Acts 1989, No. 719, § 2; 1999, No. 553, § 38.

Amendments. The 1999 amendment,

21-8-604. Activity reports — Required contents.

(a) The lobbyist activity reports shall be signed and sworn to by the registered lobbyist.

(b) The reports shall contain:

(1)(A) The total of all expenditures made or incurred by the registered lobbyist or on behalf of the registered lobbyist by his or her employer or any officer, employee, or agent during the preceding period.

(B) These totals shall be itemized according to financial category and employers and clients, including food and refreshments, entertainment, living accommodations, advertising, printing, postage, travel, telephone, and other expenses or services.

(C) Registered lobbyists shall not be required to report office expenses other than office expenses specifically required to be reported under this section.

(D) Registered lobbyists are not required to report unreimbursed personal living and travel expenses not incurred directly for lobbying;

(2)(A) An itemized listing of each:

(i) Gift given to a public servant or on behalf of the public servant;

(ii) Payment for food, lodging, or travel in excess of forty dollars (\$40.00) on behalf of a public servant; and

(iii) Any other item paid or given to a public servant or on behalf of the public servant, except for campaign contributions, having a value in excess of forty dollars (\$40.00) unless consideration of equal or greater value has been given therefor. If the person receiving or to be benefiting by the item is a public employee, the person’s governmental body shall be identified.

(B) Each item shall be identified by date, amount paid or value, and the name of the individual receiving or to be benefited by the item, and a description of the item.

(C) In the case of special events, including parties, dinners, athletic events, entertainment, and other functions, expenses need not be allocated by individuals. The information reported for a special event shall include:

(i) The date of the event;

(ii) The name of the event;

(iii) The location of the event;

(iv) The name of the governmental body or group of public servants invited;

(v) The exact amount paid by the lobbyist toward the total expenditure; and

(vi) The name of the lobbyist's employer or client making the expenditure and the names of all other lobbyists sharing in the cost of the payment;

(3) A detailed statement of any money loaned or promised or line of credit established to a public servant or to anyone on behalf of the public servant in excess of twenty-five dollars (\$25.00) per individual. Money loaned or a line of credit established that is issued in the ordinary course of business by a financial institution or a person who regularly and customarily extends credit shall not be required to be disclosed; and

(4) A statement detailing the direct business association or partnership with any public servant before whom the lobbyist may engage in lobbying.

(c) Whenever the name of a public servant will appear in an activity report of a lobbyist, the lobbyist shall notify the public servant and provide him or her the information being reported. The lobbyist shall mail or deliver the notification to the public servant not later than seven (7) working days prior to the date for filing the activity report.

History. Init. Meas. 1988, No. 1, § 1; Acts 1989, No. 719, § 2; 1997, No. 114, § 1; 1999, No. 553, § 39; 2001, No. 1839, §§ 28, 34.

Amendments. The 1999 amendment, in (b)(1)(A), inserted "or any officer, employee, or agent"; substituted "forty dollars (\$40.00)" for "twenty-five dollars (\$25.00)" in (b)(2)(A)(ii) and (b)(2)(A)(iii);

and added the last sentence in (b)(2)(A)(iii).

The 2001 amendment, in (b)(2)(C), deleted "but the date of the event, location, name of the governmental body or groups of public servants invited, and total expense shall be stated" following "by individuals" and added the last sentence; and added (b)(2)(C)(i) through (b)(2)(C)(vi).

21-8-605. Records.

A registered lobbyist shall maintain and preserve all accounts, bills, receipts, and any other documents necessary to substantiate the financial reports required by subchapters 4 and 6-8 of this chapter for a period of at least four (4) years from the date of the filing of the statement or report.

History. Init. Meas. 1988, No. 1, § 1; Acts 1989, No. 719, § 2; 1999, No. 553, § 40.

deleted "5" following "subchapters 4" and substituted "four (4) years" for "three (3) years."

Amendments. The 1999 amendment

21-8-606. Duties of public officials.

The Secretary of State, each county clerk, and each city clerk or recorder shall:

(1) Provide forms approved by the Arkansas Ethics Commission for registration and for statements required by this subchapter and §§ 21-8-401 et seq., 21-8-701 et seq., and 21-8-801 et seq. to all persons required to file; and

(2) Make all statements and reports filed available for public inspection and copying at a reasonable cost during regular office hours.

History. Init. Meas. 1988, No. 1, § 1; Acts 1989, No. 719, § 2; Init. Meas. 1990, No. 1, § 7; 2001, No. 1839, § 29.

Amendments. The 2001 amendment, in (1), deleted “4, 5 [repealed]” following “by subchapters” and added “and” to the end; deleted (2); and redesignated former (3) as present (2).

21-8-607. Prohibited acts.

(a) No person shall purposely employ any lobbyist who is required to register as a registered lobbyist but is not registered pursuant to this chapter.

(b) No person engaging in lobbying shall:

(1) Influence or attempt to influence, by coercion, bribery, or threat of economic sanction, any public servant in the discharge of the duties of his or her office;

(2) Purposely provide false information to any public servant as to any material fact pertaining to any legislative or administrative action;

(3) Purposely omit, conceal, or falsify in any manner information required by the registration and lobbyist activity reports.

(c)(1) Any person convicted for violation of any provision of this subchapter is prohibited from acting as a registered lobbyist for a period of three (3) years from the date of the conviction.

(2) Any person violating this three-year ban shall be deemed guilty of a violation of this chapter.

History. Init. Meas. 1988, No. 1, § 1; Acts 1989, No. 719, § 2.

Cross References. Arkansas Ethics Commission, § 7-6-217.

**SUBCHAPTER 7 — DISCLOSURE BY STATE AND LOCAL OFFICIALS —
STATEMENT OF FINANCIAL INTEREST**

SECTION.

21-8-701. Persons required to file — Exceptions — Contents.

21-8-702. Forms.

SECTION.

21-8-703. Place and manner of filing.

21-8-704. Filing by persons called to active duty — Exceptions.

A.C.R.C. Notes. Acts 1989, No. 5, § 1, provided: “The time limit for filing a statement of financial interest under Initiated Act 1 of 1988, for the filing made in 1989, shall be extended to a date thirty (30) days after the Attorney General renders an official opinion on all questions submitted to him on or before January 25, 1989, pertaining to the filing of a statement of financial interest under Initiated Act 1 of 1988. Upon issuing all necessary opinions, the Attorney General shall notify the Secretary of State.”

Effective Dates. Init. Meas. 1988, No. 1, § 1: Jan. 1, 1989.

Acts 2001, No. 1839, § 35: became law without governor’s signature. Approved Apr. 20, 2001. Emergency clause provided: “It is found and determined by the General Assembly that various provisions of the Arkansas Code relating to campaign financing and ethics are vague or otherwise in need of modification; that this act accomplishes those purposes; and that this act should go into effect as soon as possible so that those persons who are

subject to the provisions of the various ethics and campaign finance statutes receive the benefit of the clarifications as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is

neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

UALR L.J. Survey, Miscellaneous, 12
UALR L.J. 653.

21-8-701. Persons required to file — Exceptions — Contents.

(a) The following persons shall file a written statement of financial interest:

- (1) A public official, as defined in § 21-8-402(17);
- (2) A candidate for elective office;
- (3) A district judge or city attorney, whether elected or appointed;
- (4) Any agency head, department director, or division director of state government;
- (5) Any public appointee to any state board or commission who is authorized or charged by law with the exercise of regulatory authority or is authorized to receive or disburse state or federal funds;
- (6) All persons who are elected members of a school board or who are candidates for a position on a school board;
- (7) All public and charter school superintendents;
- (8) Directors of educational cooperatives; and
- (9) Any person appointed to one (1) of the following types of regional, municipal, or county boards or commissions:
 - (A) A planning board or commission;
 - (B) An airport board or commission;
 - (C) A water or sewer board or commission;
 - (D) A utility board or commission; or
 - (E) A civil service commission.

(b) A member of a levee district or a levee and drainage district or any candidate therefor shall not be required to file a written statement of financial interest under this section.

(c)(1)(A) The statement of financial interest for the previous calendar year shall be filed by January 31 of each year, except that a candidate for elective office shall file the statement of financial interest for the previous calendar year within thirty (30) days after the deadline for filing for office for which he or she seeks election, and persons identified in subdivisions (a)(4) and (a)(5) of this section shall file the statement of financial interest within thirty (30) days after appointment or employment.

(B) If a person is included in any category listed in subsection (a) of this section for any part of a calendar year, then such person shall file a statement of financial interest covering that period of time regardless of whether the person has left his or her office or position as of the date that statement of financial interest is due.

(2) Any incumbent officeholder who filed the statement of financial interest by January 31 of the year in which the election is held shall not be required to file an additional statement upon becoming a candidate for reelection or election to another office at any election held during the year.

(d) The statement of financial interest shall include the following:

(1) The name of the public servant and his or her spouse and all names under which they do business;

(2) The reasons for filing the statement of financial interest;

(3)(A) Identification of each employer and of each other source of gross income amounting to more than one thousand dollars (\$1,000) annually received by the person or his or her spouse in their own names, or by any other person for the use or benefit of the public servant or his or her spouse, and a brief description of the nature of the services for which the compensation was received, except that this subdivision (d)(3) shall not be construed to require the disclosure of individual items of income that constitute a portion of the gross income of the business or profession from which the public servant or his or her spouse derives income; and

(B) In addition thereto, identification of each source of gross income as described above of more than twelve thousand five hundred dollars (\$12,500), except that this shall not be construed to require the disclosure of individual items of income that constitute a portion of the gross income of the business or profession from which the public servant or his or her spouse derives income;

(4)(A) The name of every business in which the public servant and his or her spouse, or any other person for the use or benefit of the public servant or his or her spouse, have an investment or holdings of over one thousand dollars (\$1,000) at fair market value as of the last day of the previous calendar year; and

(B) In addition thereto, identification of each source as described above which has a fair market value of over twelve thousand five hundred dollars (\$12,500) as of the last day of the previous calendar year;

(5) Every office or directorship held by the public servant or his or her spouse in any business, corporation, firm, or enterprise subject to jurisdiction of a regulatory agency of this state or of any of its political subdivisions;

(6)(A) The name and address of each creditor to whom the value of five thousand dollars (\$5,000) or more was personally owed or personally obligated and is still outstanding by the public servant.

(B)(i) Loans made in the ordinary course of business by either a financial institution or a person who regularly and customarily extends credit shall not be required to be disclosed.

(ii) Debts owed to the members of the public servant's family need not be included;

(7)(A) The name and address of each guarantor or co-maker, other than a member of the public servant's family, who has guaranteed a debt of the public servant that is still outstanding.

(B)(i) This requirement shall be applicable only to debt guaranties for debts assumed or arising after January 1, 1989.

(ii) Guaranteed debts existing prior to January 1, 1989, which are extended or refinanced shall become subject to disclosure in the annual financing statement due to be filed after the conclusion of the year in which such extension or refinancing occurred;

(8) The source, date, description, and a reasonable estimate of the fair market value of each gift of more than one hundred dollars (\$100) received by the public servant or his or her spouse or more than two hundred fifty dollars (\$250) received by his or her dependent children;

(9) Each monetary or other award of more than one hundred dollars (\$100) received by the public servant in his or her capacity as an employee of a public school district, the Arkansas School for the Blind, the Arkansas School for the Deaf, the Arkansas School for Mathematics and Science, a university, a college, a technical college, a technical institute, a comprehensive life-long learning center, or a community college in recognition of his or her contribution to education;

(10) Each nongovernmental source of payment of the public servant's expenses for food, lodging, or travel which bears a relationship to the public servant's office when the public servant is appearing in his or her official capacity when the expenses incurred exceed one hundred fifty dollars (\$150). The public servant shall identify the name and business address of the person or organization paying the public servant's expenses and the date and nature of that expenditure if not compensated by the entity for which the public servant serves;

(11) Any public servant who is employed by any business which is under direct regulation or subject to direct control by the governmental body which he or she serves shall set out this employment and the fact that the business is regulated by or subject to control of the governmental body on the statement of financial interest; and

(12) If a public servant or any business in which he or she or his or her spouse is an officer, director, stockholder owning more than ten percent (10%) of the stock of the company, and the owner, trustee, or partner shall sell any goods or services having a total annual value in excess of one thousand dollars (\$1,000) to the governmental body in which the public servant serves or is employed, then the public servant shall set out in detail the goods or services sold, the governmental body to which they were sold, and the compensation paid for each category of goods or services sold.

History. Init. Meas. 1988, No. 1, § 1; 1172, § 1; 2001, No. 1599, § 22; 2001, No. Acts 1989, No. 719, § 3; 1991, No. 240, 1839, § 30.
§ 1; 1999, No. 553, §§ 41-44; 1999, No. **Publisher's Notes.** Acts 1989, No. 719,

§ 3, provided, in part, that, for the financial statement required to be filed by January 31, 1989, this requirement shall apply only to gifts received after November 8, 1988.

Amendments. The 1999 amendment by No. 553 added (a)(6) and (7); rewrote (b) and (c); added (d)(2); redesignated former (d)(2)-(d)(10) as present (d)(3)-(d)(11), respectively; substituted "last day of the previous calendar year" for "date of the state" in (d)(4)(A); substituted "as of the last day of the previous calendar year" for "on the date of the statement" in (d)(4)(B); rewrote (d)(8); and made stylistic changes.

The 1999 amendment by No. 1172 added (a)(6) and (7).

The 2001 amendment by No. 1599 inserted (a)(7)-(8) and redesignated the remaining subdivisions accordingly.

The 2001 amendment by No. 1839 inserted "gross" preceding "income" twice in (d)(3); substituted "description and a reasonable estimate of the fair market value" for "reasonable fair market value, and" in (d)(8); added (d)(9) and redesignated the remaining subsections accordingly; inserted "or she" in present (d)(11); and in present (d)(12), deleted "or" preceding "stockholder," substituted "and the owner" for "the owner," and made minor stylistic changes.

RESEARCH REFERENCES

Ark. L. Notes. Leflar, *The Reform of Ethics Rules In Arkansas Government*, 2000 Ark. L. Notes 65.

21-8-702. Forms.

Forms used by persons in filing statements as required in this subchapter shall provide for the signature of the person, under penalty of false swearing, with respect to the truth and accuracy of the statements made on the form.

History. Init. Meas. 1988, No. 1, § 1; Acts 1989, No. 719, § 3; 1999, No. 553, § 45.

Amendments. The 1999 amendment substituted "false swearing" for "perjury."

21-8-703. Place and manner of filing.

(a) The statement of financial interest shall be filed as follows:

(1) State or district public servants and candidates for state or district public office required to file shall file with the Secretary of State;

(2) County, township, or school district public servants and candidates for county, township, or school district public office required to file shall file with the county clerks;

(3) Municipal public servants and candidates for municipal office required to file shall file with the city clerk or recorder, as the case may be;

(4) All district judges or city attorneys, whether elected or appointed, shall file with the city clerk of the municipality within which they serve; and

(5) Members of regional boards or commissions shall file with the county clerk of the county in which they reside.

(b) Any report required by this subchapter shall be deemed timely filed if it is:

- (1) Hand delivered to the appropriate public official on or before the date due;
- (2) Mailed to the appropriate public official, properly addressed, postage prepaid, bearing a postmark indicating that it was received by the post office or common carrier on or before the date due;
- (3) Received via facsimile by the appropriate public official on or before the date due, provided the original is received by the appropriate public official within ten (10) days of the transmission; or
- (4) Received by the appropriate public official in a readable electronic format which is acceptable to such public official and approved by the Arkansas Ethics Commission.

History. Acts 1989, No. 719, § 3; 1999, No. 553, § 46; 2001, No. 1839, § 31.

Amendments. The 1999 amendment inserted “and manner” in the section catchline; added (b); and made stylistic changes.

The 2001 amendment inserted “and candidates for state or district public of-

fice” in (a)(1); inserted “and ... office” in (a)(2); inserted “and candidates for municipal office” in (a)(3); added “and” to the end of (a)(4); added (a)(5); substituted “appropriate public official” for “Secretary of State” throughout (b); and substituted “such public official” for “the Secretary of State” in (b)(4).

21-8-704. Filing by persons called to active duty — Exceptions.

If a person who is required to file a statement of financial interest under this subchapter is called to active duty in the armed forces of the United States:

- (1) The person shall be allowed an additional one hundred eighty (180) days to file the statement of financial interest required by this subchapter; and
- (2) The statement of financial interest may be completed by the spouse of the person. If the statement of financial interest is completed by the spouse of the person, the spouse’s signature shall be sufficient for the requirement of § 21-8-702.

History. Acts 1991, No. 472, § 1.

SUBCHAPTER 8 — DISCLOSURE BY STATE AND LOCAL OFFICIALS — CONFLICT OF INTEREST

SECTION.
21-8-801. Prohibited acts generally.
21-8-802. Prohibited appearances — Exceptions.

SECTION.
21-8-803. Reporting of potential conflicts.
21-8-804. Gifts to governmental entities.

Effective Dates. Init. Meas. 1988, No. 1, § 1: Jan. 1, 1989.

Acts 2001, No. 1839, § 35: became law without governor’s signature. Approved Apr. 20, 2001. Emergency clause provided: “It is found and determined by the General Assembly that various provisions of

the Arkansas Code relating to campaign financing and ethics are vague or otherwise in need of modification; that this act accomplishes those purposes; and that this act should go into effect as soon as possible so that those persons who are subject to the provisions of the various

ethics and campaign finance statutes receive the benefit of the clarifications as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is

neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

UALR L.J. Survey, Miscellaneous, 12
UALR L.J. 653.

21-8-801. Prohibited acts generally.

(a) No public servant shall:

(1) Receive a gift or compensation as defined in § 21-8-401 et seq., other than income and benefits from the governmental body to which he or she is duly entitled, for the performance of the duties and responsibilities of his or her office or position; or

(2) Purposely use or disclose to any other person or entity confidential government information acquired by him or her in the course of and by reason of the public servant's official duties, to secure anything of material value or benefit for himself or herself or his or her family.

(b)(1) No person shall confer a gift or compensation as defined in § 21-8-401 et seq. to any public servant, the receipt of which is prohibited by subdivision (a)(1) of this section.

(2)(A) The first violation of this subsection by any person other than a registered lobbyist shall result in a written warning.

(B) Upon a second violation and subsequent violations by persons other than registered lobbyists and upon a first violation by registered lobbyists, the penalties provided for in § 7-6-218 shall apply.

History. Init. Meas. 1988, No. 1, § 1; redesignated the former introductory language as present (a); added "or" to the end of (a)(1); and added (b).
Acts 1989, No. 719, § 4; 2001, No. 1839, § 32.

Amendments. The 2001 amendment

RESEARCH REFERENCES

Ark. L. Notes. Leflar, The Reform of Ethics Rules In Arkansas Government, 2000 Ark. L. Notes 65.

21-8-802. Prohibited appearances — Exceptions.

(a) No legislator shall appear for compensation on behalf of another person, firm, corporation, or entity before any entity of:

(1) State government, if the legislator is a member of the General Assembly;

(2) The legislator's county government, if the legislator is a member of a quorum court; or

(3) The legislator's municipal government, if the legislator is a member of a city council or board of directors of a municipality.

(b) This section shall not:

(1) Apply to any judicial proceeding or to any hearing or proceeding which is adversarial in nature or character;

(2) Apply to any hearing or proceeding on which a record is made by the entity of state government, county government, or municipal government;

(3) Apply to an appearance which is a matter of public record;

(4) Apply to ministerial actions; or

(5) Preclude a legislator from acting on behalf of a constituent to determine the status of a matter without accepting compensation.

(c) An appearance which is a matter of public record as provided in subdivision (b)(3) of this section may be made by:

(1)(A) Filing a written statement within twenty-four (24) hours with the agency head of the entity of state government, county government, or municipal government before which an appearance is sought.

(B) In the event that a written statement cannot be provided to the agency head prior to the meeting, telephonic notice must be given the agency head or his office; or

(2) Filing a quarterly statement with the agency head of the entity of state government before which an appearance is sought.

(d)(1) A statement filed under subsection (c) of this section shall identify the client on behalf of whom the appearance is made and contain a general statement of the action sought from the governmental body.

(2)(A) The statements shall be retained by the agency head and shall be a matter of public record.

(B) If the agency head determines that the release of the client's name would be an unwarranted invasion of individual privacy or would give advantage to competitors for bidding, the agency head may withhold the name until appropriate.

(e) No member of the General Assembly shall receive any income or compensation as defined in § 21-8-401 et seq., other than income and benefits from the governmental body to which he or she is duly entitled, for lobbying other members of the General Assembly by communicating directly or soliciting others to communicate with any other member with the purpose of influencing legislative action by the General Assembly.

History. Init. Meas. 1988, No. 1, § 1;
Acts 1989, No. 719, § 4; 1995, No. 1111,
§ 1.

21-8-803. Reporting of potential conflicts.

(a) A legislator who is required to take an action in the discharge of his or her official duties that may affect his or her financial interest or cause financial benefit or detriment to him, or a business in which he or she is an officer, director, stockholder owning more than ten percent (10%) of the stock of the company, owner, trustee, partner, or employee, which is distinguishable from the effects of the action on the public generally or a broad segment of the public, shall:

(1) Prepare a written statement describing the matter requiring action and stating the potential conflict; and

(2)(A) Deliver a copy of the statement to the appropriate official to be filed with the statement of financial interest.

(B) The copy of the statement may be delivered in person by the public official, by mail, or by a person authorized by the public official to deliver the copy.

(b) The obligation to report a potential conflict of interest under this section arises as soon as the legislator is aware of the conflict.

(c) If the statement of financial interest filed by the legislator makes the conflict readily apparent, then no report need be filed.

History. Init. Meas. 1988, No. 1, § 1;
Acts 1989, No. 719, § 4.

21-8-804. Gifts to governmental entities.

(a)(1) The Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Commissioner of State Lands, and Attorney General, in their official capacity, may accept gifts, grants, and donations of money or property on behalf of the state for any lawful public purpose.

(2) The President Pro Tempore of the Senate, in his or her official capacity, may accept gifts, grants, and donations of money or property on behalf of the Senate for any lawful public purpose.

(3) The Speaker of the House, in his or her official capacity, may accept gifts, grants, and donations of money or property on behalf of the House of Representatives for any lawful public purpose.

(4) The Chief Justice of the Supreme Court, in his or her official capacity, may accept gifts, grants, and donations of money or property on behalf of the Supreme Court for any lawful public purpose.

(b)(1) Except as provided in subdivision (b)(2) of this section, the items received shall:

(A) Not be of such a personal nature that their use is limited to a specific person or persons;

(B) Be available to be enjoyed by the public at large; and

(C) Become property of the governmental entity to which they were donated.

(2) The designated officials may accept donations of money for the purpose of hosting the:

(A) Official swearing-in and inaugural events of the constitutional officers, Senate, House of Representatives, and Supreme Court justices;

(B) Official recognition event for the President Pro Tempore of the Senate; and

(C) Official recognition event for the Speaker of the House.

(c) The public official accepting the gift, grant, or donation of money on behalf of the appropriate entity shall disclose to the Arkansas Ethics Commission on a quarterly basis:

(1) The gift, grant, or donation of money received;

(2) The person donating the gift, grant, or donation of money; and

(3) The estimated value of the gift, grant, or donation of money.

History. Acts 2001, No. 239, § 2.

SUBCHAPTER 9 — DISCLOSURE BY LEGISLATORS — SALES TO THE STATE

SECTION.

21-8-901. Disclosure required.

21-8-902. Place of filing — Form.

SECTION.

21-8-903. Penalty.

A.C.R.C. Notes. References to “this chapter” in subchapters 2-8 may not apply to this subchapter, which was enacted subsequently.

21-8-901. Disclosure required.

In addition to the required filings under § 21-8-701, a member or a member-elect of the General Assembly shall report any goods or services sold during the previous calendar year having a total annual value in excess of one thousand dollars (\$1,000) to an office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of the State of Arkansas by the member, his or her spouse, or by any business in which such person or his or her spouse is an officer, director, or stockholder owning more than ten percent (10%) of the stock.

History. Acts 1991, No. 808, § 1; 1999, No. 553, § 47.

Amendments. The 1999 amendment substituted “under § 21-8-701, a member or a member-elect” for “under § 21-8-401 et seq., a member,” inserted “during the previous calendar year,” and substituted “such person” for “the member.”

21-8-902. Place of filing — Form.

(a) The disclosure required by § 21-8-901 shall be filed with the Secretary of State at the same time as the filing of the statement of financial interest required under § 21-8-701 et seq.

(b) The disclosure shall be on a form requiring the signature of the member, under penalty of perjury, with respect to the truth and accuracy of the statements made on the form.

History. Acts 1991, No. 808, § 1.

21-8-903. Penalty.

Any person who purposely violates the provisions of this subchapter shall be deemed guilty of a Class A misdemeanor.

History. Acts 1991, No. 808, § 1.

SUBCHAPTER 10 — STATE BOARDS, COMMISSIONS, AND ENTITIES RECEIVING STATE FUNDS

SECTION.	SECTION.	
21-8-1001. Conflicts of interest.		Arkansas Ethics Commis-
21-8-1002. Use of position for privileges or exemptions.		sion.
21-8-1003. Confidential information.	21-8-1005. Subchapter supplemental to	other laws.
21-8-1004. Penalties — Investigation by		

A.C.R.C. Notes. References to “this chapter” in subchapters 2-8 may not apply to this subchapter, which was enacted subsequently.

This subchapter supplements the provisions in § 21-8-304.

21-8-1001. Conflicts of interest.

(a)(1) No member of a state board or commission or board member of an entity receiving state funds shall participate in, vote on, influence, or attempt to influence an official decision if the member has a pecuniary interest in the matter under consideration by the board, commission, or entity.

(2) A member of a state board or commission or board member of an entity receiving state funds may participate in, vote on, influence, or attempt to influence an official decision if the only pecuniary interest that may accrue to the member is incidental to his or her position or accrues to him or her as a member of a profession, occupation, or large class to no greater extent than the pecuniary interest could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

(b) No member of a state board or commission or board member of an entity receiving state funds shall participate in any discussion or vote on a rule or regulation that exclusively benefits the member.

History. Acts 1995, No. 1123, § 2; 2001, No. 1244, § 2.

Amendments. The 2001 amendment, in (a)(1), inserted “or board member of an entity receiving state funds” throughout and substituted “board, commission, or entity” for “board or entity.”

21-8-1002. Use of position for privileges or exemptions.

No member of a state board or commission or board member of an entity receiving state funds shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others.

History. Acts 1995, No. 1123, § 2; inserted “or board member of an entity receiving state funds.”
2001, No. 1244, § 3.

Amendments. The 2001 amendment

21-8-1003. Confidential information.

No member of a state board or commission or board member of an entity receiving state funds shall disclose confidential information acquired by him or her in the course of the member’s official duties or use such information to further his or her personal interests.

History. Acts 1995, No. 1123, § 2; inserted “or board member of an entity receiving state funds” and made minor
2001, No. 1244, § 4.

Amendments. The 2001 amendment punctuation changes.

21-8-1004. Penalties — Investigation by Arkansas Ethics Commission.

(a) In addition to any penalty contained in any other provision of law, any member of a state board or commission or board member of an entity receiving state funds who knowingly and intentionally violates any of the provisions of this subchapter may be removed from office by the appointing authority.

(b) The Arkansas Ethics Commission may investigate complaints alleging a violation of this subchapter and may make recommendations to the appointing authority.

History. Acts 1995, No. 1123, § 2; inserted “or board member of an entity receiving state funds in (a).”
2001, No. 1244, § 5.

Amendments. The 2001 amendment

21-8-1005. Subchapter supplemental to other laws.

This subchapter shall be supplemental to all other laws concerning ethics or conflicts of interest.

History. Acts 1995, No. 1123, § 2.

CHAPTER 9**LIABILITY OF STATE AND LOCAL GOVERNMENTS****SUBCHAPTER.**

1. GENERAL PROVISIONS. [RESERVED.]
2. LIABILITY OF STATE.
3. LIABILITY OF POLITICAL SUBDIVISIONS.

Cross References. Immunity from tort liability, § 16-120-101 et seq.

RESEARCH REFERENCES

Am. Jur. 60A *Am. Jur. 2d*, *Pens.*, § 180.
70A *Am. Jur. 2d*, *Soc. Sec.*, §§ 362, 448,
449, 490, 492, 499, 522-525, 527.

C.J.S. 47A *C.J.S.*, *Int. Rev.*, §§ 298,
299.
47B *C.J.S.*, *Int. Rev.*, § 631.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — LIABILITY OF STATE

SECTION.

21-9-201. Definition.
21-9-202. Jurisdiction of Arkansas State
Claims Commission.
21-9-203. Authority to pay damages —
Conflict of interest.

SECTION.

21-9-204. Effect of employee insurance.
21-9-205. Procedure for making claims.

Cross References. Immunity of state officers and employees, § 19-10-305.

State Claims Commission, § 19-10-201 et seq.

Effective Dates. Acts 1977, No. 543, § 9: Mar. 18, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that a number of State officers and employees are being made defendants in lawsuits seeking damages for their acts or omissions in the performance of their official duties; that in many instances such lawsuits are filed against the estates of such officers or employees; and that it is essential that the State of Arkansas offer protection for its officers or employees against personal liability for performing their official duties, and that the immediate passage of this Act is necessary to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 113, § 6: Feb. 7, 1997. Emergency clause provided: "It is hereby

found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Judiciary and in its place established the House Interim Committee and Senate Interim Committee on Judiciary; that the Arkansas Code 21-9-203 refers to the Joint Interim Committee on Judiciary and should be corrected to refer to the House and Senate Interim Committees on Judiciary; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

ALR. Government liability for death or injury resulting from design, construction, or failure to warn of narrow bridge. 2 ALR 4th 635.

Governmental tort liability for injuries caused by negligently released individual. 6 ALR 4th 1155.

Liability of governmental officer or entity for failure to warn or notify of release of potentially dangerous individual from custody. 12 ALR 4th 722.

Municipal or state liability for injuries resulting from police roadblocks etc. 19 ALR 4th 937.

State or local governmental unit's liability for injury to private highway construction worker based on its own negligence. 29 ALR 4th 1188.

Validity and construction of statute or ordinance limiting the kinds or amount of actual damages recoverable in tort action against governmental unit. 43 ALR 4th 19.

Failure to restrain drunk driver as ground of liability of state or local government unit or officer. 48 ALR 4th 320.

Ark. L. Rev. Pagan, Eleventh Amendment Analysis, 39 Ark. L. Rev. 447.

Case Notes, Bly v. Young, Beaulieu v. Gray, and Carter v. Bush: The Arkansas State Employee Immunity Trilogy, 41 Ark. L. Rev. 893.

UALR L.J. Legislative Survey, Civil Procedure, 8 UALR L.J. 555.

CASE NOTES**In General.**

This subchapter provides for a way of paying claims adjudged against employees who have no insurance to pay the claim or where the claim exceeds the lim-

its of the employee's coverage. Carter v. Bush, 283 Ark. 16, 677 S.W.2d 837 (1984), overruled in part on other grounds by Beaulieu v. Gray, 288 Ark. 395, 705 S.W.2d 880 (1986).

21-9-201. Definition.

For the purpose of this subchapter, elected state officials and members of commissions, boards, or other governing bodies of agencies are officers of the State of Arkansas.

History. Acts 1977, No. 543, § 6; A.S.A. 1947, § 12-3406.

21-9-202. Jurisdiction of Arkansas State Claims Commission.

(a) The Arkansas State Claims Commission shall have jurisdiction over all claims for indemnification based on a judgment or negotiated settlement in conformity with § 21-9-203.

(b) Proceedings for the recovery of claims and the payment of claims shall be governed by the law governing proceedings before the commission and payment of claims allowed by the commission.

History. Acts 1977, No. 543, § 5; A.S.A. 1947, § 12-3405.

21-9-203. Authority to pay damages — Conflict of interest.

(a) The State of Arkansas shall pay actual, but not punitive, damages adjudged by a state or federal court, or entered by such a court as a result of a compromise settlement approved and recommended by the Attorney General, against officers or employees of the State of Arkansas, or against the estate of such an officer or employee, based on an act or omission by the officer or employee while acting without malice and in good faith within the course and scope of his or her employment and in the performance of his or her official duties.

(b)(1)(A) When it has been determined by the Attorney General’s office that a conflict of interest for the civil litigation division or any division of the Attorney General’s office exists and that therefore the Attorney General’s office must decline representation of the officer or employee, the state agency for which the officer or employee is employed is authorized to enter into a contract to hire special counsel to represent the officer or employee under the same conditions that are set out under the provisions of this subchapter and § 21-9-304.

(B) The agency will be responsible for the payment of the contract with funds from its maintenance and general operation accounts.

(2) When situations arise in which the Attorney General feels that a conflict of interest exists and therefore must decline representation of the officer or employee, the Attorney General shall prepare a report that he or she shall submit to the House Interim Committee on Judiciary and Senate Interim Committee on Judiciary, in which he or she shall recite the reasons for the conflict of interest and the reasons his or her office declined representation.

(c) Upon the recommendation of the Attorney General, the State of Arkansas shall have authority to pay damages based on an act or omission by an officer or employee of the State of Arkansas while acting without malice and in good faith within the course and scope of his or her employment and in the performance of his or her official duties, where the amount of damages is determined by negotiated settlement before or after an action has been commenced.

History. Acts 1977, No. 543, §§ 1, 2; 1985, No. 863, § 1; A.S.A. 1947, §§ 12-3401, 12-3402; Acts 1997, No. 113, § 2.

CASE NOTES

ANALYSIS	
Action against state. Waiver.	be required to pay any judgment obtained against the state employees. <i>Beaulieu v. Gray</i> , 288 Ark. 395, 705 S.W.2d 880 (1986).
Action Against State.	Where a suit is brought against an officer or agency with relation to some matter in which defendant represents the state in action and liability, and the state, while not a party to the record, is the real party against which relief is sought so that a judgment for plaintiff, although
A tort action nominally filed against state employees was in reality an action against the state in violation of the sovereign immunity clause since, under the provisions of this section, the state would	

nominally against the named defendant as an individual or entity distinct from the state, will operate to control the action of the state or subject it to liability, the suit is in effect one against the state and cannot be maintained without its consent. *Assaad-Faltas v. University of Ark. for Medical Sciences*, 708 F. Supp. 1026 (E.D. Ark. 1989), *aff'd*, 902 F.2d 1572 (8th Cir.), *cert. denied*, 498 U.S. 905, 111 S. Ct. 271, 112 L. Ed. 2d 227 (1990).

Waiver.

Arkansas did not expressly waive its sovereign immunity by virtue of this section. *Burk v. Beene*, 948 F.2d 489 (8th Cir. 1991).

Cited: *Heigle v. Miller*, 332 Ark. 315, 965 S.W.2d 116 (1998); *Okruhlik v. Univ. of Ark.*, 255 F.3d 615 (8th Cir. 2001).

21-9-204. Effect of employee insurance.

Damages payable under this subchapter shall be reduced to the extent that the officer or employee has been indemnified or is entitled to indemnification under any contract of insurance.

History. Acts 1977, No. 543, § 3; A.S.A. 1947, § 12-3403.

21-9-205. Procedure for making claims.

(a) A party desiring to make a claim for indemnification under this subchapter shall notify the Attorney General of the filing of a complaint in any court or the making of any other form of demand for damages promptly after it is filed or made and permit the Attorney General to participate in all trial or settlement negotiations or proceedings regarding the complaint or demand.

(b) Compliance with all requirements of this section shall be prerequisite to payment of any claim under this subchapter.

(c) Nothing in this section shall be construed to deny any party desiring to make a claim under this subchapter from employing legal counsel of his or her choosing to defend any lawsuit or other demand for damages.

History. Acts 1977, No. 543, § 4; A.S.A. 1947, § 12-3404.

SUBCHAPTER 3 — LIABILITY OF POLITICAL SUBDIVISIONS

SECTION.

- 21-9-301. Tort liability — Immunity declared.
- 21-9-302. Tort liability — Settlement of claims.
- 21-9-303. Motor vehicle liability insur-

SECTION.

- ance required — Minimum amounts.
- 21-9-304. Indemnification by state for certain actions.

Preambles. Acts 1987, No. 1064, contained a preamble which read: "WHEREAS, Act 165 of 1969 (Ark. Stat. 12-2901 — 12-2903) provided statutory tort immu-

nity to units of local government after more than 150 years of tort immunity for local government under the common law; and

"WHEREAS, this statute has been upheld at least 17 times by the State Supreme Court and Federal Court decisions in the past 18 years; and

"WHEREAS, two of these decisions, *Matthews v. Martin*, 280, Ark. 345, 658 S W 2d 374 (1983) and *Autry v. Lawrence*, 286 Ark. 501, 696 S W 2nd 315, have reaffirmed that local government employees in the performance of their official duties have the same immunity as their local government employer; and

"WHEREAS, Section 3 of Act 165 of 1969 (Ark. Stat. 12-2903) requires political subdivisions to carry liability insurance on their motor vehicles in the minimum amounts prescribed in the Motor Vehicle Safety Responsibility Act. These limits are now \$25,000 for injury or death for one person; \$50,000 for injuries or death for two or more persons and \$15,000 property damage; and

"WHEREAS, under the Supreme Court opinion of *Sturdivant v. City of Farmington*, 255 Ark. 415, 500 S W 2nd 769, (1973) local governments can be self-insured up to these limits and under other Arkansas laws can form pools and groups to better self-insure the risks; and

"WHEREAS, the maximum combined limits for the local government employee in the performance of his official duty and the local government employer should be the minimum as provided in the Motor Vehicle Safety Responsibility Act,

"NOW THEREFORE ..."

Effective Dates. Acts 1969, No. 165, § 4: became law without Governor's signature, Mar. 5, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the decision of the Arkansas Supreme Court in *Parish v. Pitts*, 244 Ark. 1239, municipalities and all units of local government are in imminent danger of bankruptcy because of tort lawsuits and vital public services are in danger of being discontinued. Therefore, an emergency is hereby declared to exist and this act being immediately necessary to protect the public peace, health and safety, shall take effect immediately on its passage and approval."

Acts 1987, No. 590, § 6: Apr. 4, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the escalating costs of automobile liability insurance premiums for

the political subdivisions and municipalities of the State of Arkansas drains the financial resources of these local governments and that financial problems of local governments threaten the delivery of vital services to the citizens of this State and that by self-insuring their motor vehicles, local governments may relieve themselves of this financial burden. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 820, § 3: Apr. 8, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that a question has arisen regarding the applicability of Act 711 of 1983 regarding cases in which first class cities, second class cities, incorporated towns, counties and their employees are covered by contracts of insurance. It was the intent of the General Assembly in enacting Act 711 of 1983 that providers of insurance coverage for said entities not be relieved of their obligations to said entities with regard to the provision of legal defense and the payment of judgments for said entities. It is further hereby found and determined by the General Assembly that cases are or may be pending in which this issue is in question, and that the immediate passage of this Act is necessary in order to clarify for the courts the legislative intent with regard to this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 1064, § 3: Apr. 17, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law affirms governmental immunity of political subdivisions of the State but requires such political subdivisions to maintain motor vehicle liability insurance in the minimum amounts prescribed in the Motor Vehicle Financial Responsibility Law; that the Arkansas Supreme Court has held that local government employees in the performance of their duties have the same immunity as their local government employer; that this Act is designed to clarify the combined liability of local government-

tal entities and their employees and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989 (3rd Ex. Sess.), No. 47, § 4: Nov. 16, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that some political subdivisions of this State have purchased motor vehicle liability insurance in excess of the minimum amounts required by the Motor Vehicle Safety Responsibility Act; that the insurers are refusing to honor the policy limits and instead claiming their maximum liability is the minimum amounts prescribed by the Motor Vehicle Safety Responsibility Act; that it is fundamentally unfair for insurance carriers to not provide the coverage for which they have collected a premium; that this will require the insurance carriers to honor their contractual obligations; and that this Act should be given effect immediately in order to eliminate the inequity as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 542, § 11: Mar. 14, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that a recent

court decision has led to uncertainty in the area of immunity under existing Arkansas Code provisions; that to clarify such provisions will allow those persons to avoid needless legal expenses resulting from the possible misinterpretation of the law. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 292, § 7: Mar. 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that a recent court decision regarding Act 542 of 1991 has led to uncertainty and confusion in the area of immunity of officials and employees of the state and local government of Arkansas; that this act is necessary to clarify the application and immunities of Act 542 of 1991 and to avoid the unintended interpretation of Act 542 as permitting suits directly against the liability insurers for state and local government officials and employees; and that it is necessary to extend its coverage retroactively to the effective date of Act 542 of 1991. Therefore, in order to prevent the misinterpretation of law, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Government liability for death or injury resulting from design, construction, or failure to warn of narrow bridge. 2 ALR 4th 635.

Liability of governmental unit or its officers for injury to innocent occupant of moving vehicle, or for damages to such vehicle, as result of police chase. 4 ALR 4th 865.

Governmental tort liability for injuries caused by negligently released individual. 6 ALR 4th 1155.

Liability of governmental officer or entity for failure to warn or notify of release of potentially dangerous individual from custody. 12 ALR 4th 722.

Liability, in motor vehicle-related cases, of governmental entity for injury, death,

or property damage, resulting from defect or obstruction in shoulder of street or highway. 19 ALR 4th 532.

Municipal or state liability for injuries resulting from police roadblocks, etc. 19 ALR 4th 937.

State or local governmental unit's liability for injury to private highway construction worker based on its own negligence. 29 ALR 4th 1188.

Modern status of rule excusing governmental unit from tort liability on theory that only general, not particular, duty was owed under circumstances. 38 ALR 4th 1194.

Validity and construction of statute or ordinance limiting the kinds or amount of actual damages recoverable in tort action

against governmental unit. 43 ALR 4th 19.

Failure to restrain drunk driver as ground of liability of state or local government unit or officer. 48 ALR 4th 320.

Am. Jur. 57 Am. Jur. 2d, Mun. Tort. Liab., § 1 et seq.

C.J.S. 20 C.J.S., Counties, § 254.

64A C.J.S., Mun. Corp., §§ 1935, 1936.

78A C.J.S., Schools, § 674.

UALR L.J. Arkansas Law Survey, Roberts and Deere, Torts, 8 UALR L.J. 207.

CASE NOTES

Constitutionality.

Sections 21-9-301 — 21-9-303 are not unconstitutional as a violation of Ark. Const., Art. 2, § 13 or Ark. Const., Art. 2, § 29. *Thompson v. Sanford*, 281 Ark. 365, 663 S.W.2d 932 (1984).

Cited: *Salley v. Central Ark. Transit Auth.*, 326 Ark. 804, 934 S.W.2d 510 (1996).

21-9-301. Tort liability — Immunity declared.

(a) It is declared to be the public policy of the State of Arkansas that all counties, municipal corporations, school districts, special improvement districts, and all other political subdivisions of the state and any of their boards, commissions, agencies, authorities, or other governing bodies shall be immune from liability and from suit for damages except to the extent that they may be covered by liability insurance.

(b) No tort action shall lie against any such political subdivision because of the acts of its agents and employees.

History. Acts 1969, No. 165, § 1; A.S.A. 1947, § 12-2901; Acts 1991, No. 542, § 7; 1993, No. 292, § 2; 1999, No. 984, § 1.

Publisher's Notes. Acts 1993, No. 292, § 3, provided: "This act shall have a retroactive application to the effective date of Act 542 of 1991 to avoid the misinterpretation of the intent of Act 542 as permitting suits directly against liability insurers of state and local government officials and employees. This act is intended to

have retroactive effect so as to apply to any suits pending as of the effective date of this act."

Cross References. Donors of firefighting equipment not liable — Exceptions, § 16-120-105.

Amendments. The 1999 amendment inserted "and any of their boards ... governing bodies" in the first sentence, and made a minor punctuation change.

RESEARCH REFERENCES

Ark. L. Rev. Case Notes, *Bly v. Young*, *Beaulieu v. Gray*, and *Carter v. Bush*: The Arkansas State Employee Immunity Trilog-y, 41 Ark. L. Rev. 893.

"Taking" a Look at Inverse Condemnation in Arkansas: *Robinson v. City of Ashdown*, 44 Ark. L. Rev. 519.

UALR L.J. Notes, 42 U.S.C. § 1983 — Civil Rights — Municipalities Liable for Money Damages. *Monell v. Department of Social Servs.*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978), 2 UALR L.J. 419.

Survey — Torts, 10 UALR L.J. 609.

CASE NOTES

ANALYSIS

Constitutionality.
In general.
Construction.
Purpose.
Applicability.
Civil rights actions.
Deceit.
De novo review.
Insurance coverage.
Intentional torts.
Jurisdiction.
Malicious prosecution.
Negligence.
Political subdivision.

Constitutionality.

Sovereign immunity to tort suit did not violate Ark. Const., Art. 2, § 13, in action where administratrix had other recourse for victim's suffocation in unattended jail. *Hardin v. City of DeValls Bluff*, 256 Ark. 480, 508 S.W.2d 559 (1974).

This section is not unconstitutional under the equal protection clause of U.S. Const. Amend. 14 because the effect of this section is to restore the tort immunity of cities that had been abolished and to reaffirm the tort immunity of school districts, special improvement districts, and all other political subdivisions. *Lacey v. Bekaert Steel Wire Corp.*, 619 F. Supp. 1234 (W.D. Ark. 1985), *aff'd*, 799 F.2d 434 (8th Cir. 1986).

The statutory scheme which provides that local governments are immune from tort liability is a valid legislative effort to provide a method and manner of relief to some victims of governmental tortfeasors; thus, the district court did not err in sustaining these sections as rationally related to a legitimate state interest. *Lacey v. Bekaert Steel Wire Corp.*, 799 F.2d 434 (8th Cir. 1986).

Constitutionality of this section upheld. Plaintiffs are not denied recourse for their damage, only the right to proceed in tort. *Chestnut v. Norwood*, 292 Ark. 498, 731 S.W.2d 200 (1987).

This section is constitutional and does not violate Ark. Const., Art. 2, § 13 or Ark. Const., Art. 5, § 32. *White v. City of Newport*, 326 Ark. 667, 933 S.W.2d 800 (1996).

In General.

The former distinction between governmental and proprietary actions was abol-

ished by this section. *Augustine v. City of W. Memphis*, 281 Ark. 162, 662 S.W.2d 813 (1984).

Since statutes granting political subdivisions immunity or denying them immunity are legal; statutes which limit that liability are legal for the same reasons — to make these government entities bear some responsibility for wrongs to individuals harmed by their negligence, but also to prevent these same entities from exposure to high judgments which would destroy them. *Thompson v. Sanford*, 281 Ark. 365, 663 S.W.2d 932 (1984).

This section prevents a person from recovering for the negligence of a political subdivision, or for its employees' negligent performance of their official duties. *Davis v. Fulton County*, 884 F. Supp. 1245 (E.D. Ark. 1995).

The grant of immunity contained in § 21-9-301 is not as comprehensive as the constitutional prohibition established by Article 5, Section 20, of the Arkansas Constitution; specifically, the immunity granted by statute for tortious conduct is limited to any recovery in excess of insurance coverage, whereas the constitutional prohibition against bringing an action against the state is far-reaching and applies to all circumstances where the state's treasury could be tapped for the payment of damages. *Dermott Special Sch. Dist. v. Johnson*, 343 Ark. 90, 32 S.W.3d 477 (2000).

Construction.

While the pleading distinction between "official capacity" liability and "individual capacity" liability remains relevant in federal actions alleging official misconduct by public officials, this distinction is of no moment when determining the scope of the immunity afforded by this section in any analogous tort actions. *Davis v. Fulton County*, 884 F. Supp. 1245 (E.D. Ark. 1995).

Purpose.

It was the intent of the General Assembly in enacting this section to grant immunity to municipal agents and employees for acts of negligence committed in their official capacities. *Autry v. Lawrence*, 286 Ark. 501, 696 S.W.2d 315 (1985).

Applicability.

Claims under the torts of outrage (also known as intentional infliction of emotional distress), battery, assault, false imprisonment, and intentional torts fall outside the purview of this section. *Davis v. Fulton County*, 884 F. Supp. 1245 (E.D. Ark. 1995).

Civil Rights Actions.

A county is a unit of local government and does not share in the state's immunity from 42 U.S.C. § 1983 civil rights actions, thus, where the violation of policies by a sheriff over a period of time were overlooked, the county as an entity was responsible for injuries caused. *Mosier v. Robinson*, 722 F. Supp. 555 (W.D. Ark. 1989).

Deceit.

An action against a city by a landowner who alleged that his execution of a deed granting the city an easement across his property for the installation of sewer lines was induced by deliberate fraud was a cause of action for deceit which would be precluded by this section. *Harrington v. City of Greenbrier*, 262 Ark. 773, 561 S.W.2d 302 (1978).

De Novo Review.

Where plaintiff's tort claim against county was denied by county judge and plaintiff sought a de novo review in the circuit court in accordance with § 16-67-207, the circuit judge held that the provisions of this section immunized the county from the tort claim and properly dismissed the claim. The circuit court thus did, in the de novo review pursuant to § 16-67-207, exactly as it would have had to do if the case had been brought "as other cases at law." *Bigelow v. Union County*, 287 Ark. 486, 701 S.W.2d 125 (1985).

Insurance Coverage.

State employees are not immune from suit for negligence to the extent they are covered by other viable liability insurance. *Deutsch v. Tillery*, 309 Ark. 401, 833 S.W.2d 760 (1992).

Construction company was not an insurer for the purposes of administrator's wrongful death action, notwithstanding that it agreed to indemnify the city against damages and obtained insurance to do so. *Cherry v. Tanda, Inc.*, 327 Ark. 600, 940 S.W.2d 457 (1997).

Administrator's action against insurance carrier as a quasi-insurer of the city under this section was without merit where the insurance contract was carried by the employer construction company, not the city. *Cherry v. Tanda, Inc.*, 327 Ark. 600, 940 S.W.2d 457 (1997).

A city is not immune to the extent that it has liability insurance. *City of Caddo Valley v. George*, 340 Ark. 203, 9 S.W.3d 481 (2000).

Summary judgment was improperly granted in favor of a city and its employee in a negligence action based on governmental immunity where there was a genuine issue of material fact as to whether the operation of the loader on public roads was frequent and regular or merely incidental and, thus, whether the front-end loader was exempted from the statutory definition of "motor vehicle." *Spears v. City of Fordyce*, 351 Ark. 305, 92 S.W.3d 38 (2002).

Intentional Torts.

While public officials named under this section are immune from tort liability for negligent acts committed in the performance of their official duties, that immunity does not include intentional torts committed by those officials. *Battle v. Harris*, 298 Ark. 241, 766 S.W.2d 431 (1989).

The immunity granted in this section does not apply to intentional torts. *Almand v. Benton County*, 145 Bankr. 608 (W.D. Ark. 1992).

The tort of outrage is an intentional tort for which a cause of action lies where the conduct is so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society; this section does not provide immunity for the intentional acts of school districts. *Deutsch v. Tillery*, 309 Ark. 401, 833 S.W.2d 760 (1992).

Intentional actions by board members are not protected by statutory immunity. *West Memphis Sch. Dist. No. 4 v. Circuit Court*, 316 Ark. 290, 871 S.W.2d 368 (1994).

This section does not shield intentional torts such as battery. *Morris v. Crawford County*, 173 F. Supp. 2d 870 (W.D. Ark. 2001), *aff'd*, 299 F.3d 919 (8th Cir. 2002).

Jurisdiction.

Where a landowner's action could be taken as a suit for damages for trespass,

the chancery court had no jurisdiction since equity will not take jurisdiction of an action to recover unliquidated damages for tort and since the county is immune from suit for damages in a tort action. *Chamberlain v. Newton County*, 266 Ark. 516, 587 S.W.2d 4 (1979).

This section establishes an immunity defense; that does not mean that the circuit court is without jurisdiction to hear a motion to dismiss on statutory immunity grounds. *West Memphis Sch. Dist. No. 4 v. Circuit Court*, 316 Ark. 290, 871 S.W.2d 368 (1994).

Malicious Prosecution.

A city police officer acting in his official capacity when he presented evidence to the prosecutor which resulted in plaintiff's arrest was immune from an action for malicious prosecution. *Autry v. Lawrence*, 286 Ark. 501, 696 S.W.2d 315 (1985).

City collector was entitled to qualified immunity in a malicious prosecution action by a receiver who was prosecuted for payment of taxes owed by a corporation with a worthless check. *Culpepper v. Biggers*, 742 F. Supp. 528 (E.D. Ark. 1990).

Negligence.

A suit against county for damages for death which resulted when vehicle left county public road on an allegedly unmarked curve was barred on the basis of the county's immunity from tort liability. *Sullivan v. Pulaski County*, 247 Ark. 259, 445 S.W.2d 94 (1969).

A suit against county for negligence which resulted in injuries to appellant from an automobile accident allegedly caused by the county's negligence in failing to erect certain warning signs and speed limit signs was barred on the basis of the county's immunity from tort liability. *Chandler v. Pulaski County*, 247 Ark. 262, 445 S.W.2d 96 (1969).

Municipal officers and employees are immune from tort liability for negligent acts they may commit in the performance of their official duties; accordingly, a city fire chief, a city director of planning, and a city manager were immune from an action brought against them in their official capacities alleging that, due to the officers' negligence, the plaintiffs' residence burned because of the city fire depart-

ment's refusal to respond to a call for assistance. *Matthews v. Martin*, 280 Ark. 345, 658 S.W.2d 374 (1983).

City and its public utility commission were immune from suit to recover for personal injuries suffered by plaintiff when she was struck by a falling limb that had been cut by an employee of the city or of the commission while engaged in cutting tree limbs along a public street. *Augustine v. City of W. Memphis*, 281 Ark. 162, 662 S.W.2d 813 (1984).

Where school district built house as vocational education project, action for fire loss was one in tort for negligence and was barred by this section. *Bankston v. Pulaski County School Dist.*, 281 Ark. 476, 665 S.W.2d 859 (1984).

Where employees were performing their official duties for the school district that employed them at the time of their alleged acts of negligence, they and the school district are immune from tort liability under this section. *Cousins v. Dennis*, 298 Ark. 310, 767 S.W.2d 296 (1989).

In order that persons injured by a political subdivisions' vehicles may have redress for negligence, § 21-9-303 requires political subdivisions to carry liability insurance on their motor vehicles. *King v. Little Rock Sch. Dist.*, 301 Ark. 148, 782 S.W.2d 574 (1990).

A school choir director was immune from a cause of action for negligence, and a school district was immune from a cause of action for negligence in hiring and supervising, instructing, and training personnel. *Wallace ex rel. Wallace v. Bryant Sch. Dist.*, 46 F. Supp. 2d 863 (E.D. Ark. 1999), *aff'd sub nom. Wallace ex rel. Wallace v. Bryant*, 208 F.3d 219 (8th Cir. 2000).

Political Subdivision.

Corporation which expressly stated in its articles of incorporation that its purpose was to aid educational institutions inside the city, but whose activities far exceeded its declared purpose, operated outside of the statutory boundaries of a utility commission as permitted by the code and thus, corporation was not entitled to immunity as a political subdivision under this section. *Masterson v. Stambuck*, 321 Ark. 391, 902 S.W.2d 803 (1995).

Counties are expressly included within the class of "political subdivisions" pro-

tected by this section. *Davis v. Fulton County*, 884 F. Supp. 1245 (E.D. Ark. 1995).

The Quorum Court is a "political subdivision" which benefits from any immunity afforded by this section. *Davis v. Fulton County*, 884 F. Supp. 1245 (E.D. Ark. 1995).

Cited: *Williams v. Jefferson Hosp. Ass'n*, 246 Ark. 1231, 442 S.W.2d 243 (1969); *Reeme v. Natural Gas Imp. Dist. No. 2*, 247 Ark. 983, 448 S.W.2d 647 (1970); *Wawak v. Stewart*, 247 Ark. 1093, 449 S.W.2d 922 (1970); *Lassiter v. State Farm Mut. Auto. Ins. Co.*, 371 F. Supp. 1221 (E.D. Ark. 1974); *Collier v. City of Springdale*, 733 F.2d 1311 (8th Cir. 1984); *Delta Special Sch. Dist. No. 5 v. State Bd. of Educ.*, 745 F.2d 532 (8th Cir. 1984); *Helms v. Southern Farm Bureau Cas. Ins.*

Co., 281 Ark. 450, 664 S.W.2d 870 (1984); *Harrison v. Springdale Water & Sewer Comm'n*, 780 F.2d 1422 (8th Cir. 1986); *Little Rock Port Auth. v. McCain*, 296 Ark. 130, 752 S.W.2d 44 (1988); *Conway Corp. v. Construction Eng'rs, Inc.*, 300 Ark. 225, 782 S.W.2d 36 (1989); *Dumond v. Conlee*, 710 F. Supp. 1270 (E.D. Ark. 1988); *Buttolph Trust v. Jarnagan*, 302 Ark. 393, 789 S.W.2d 466 (1990); *Almand v. Benton County*, 145 Bankr. 608 (W.D. Ark. 1992); *Waire v. Joseph*, 308 Ark. 528, 825 S.W.2d 594 (1992); *65th Ctr., Inc. v. Copeland*, 308 Ark. 456, 825 S.W.2d 574 (1992); *Vinson Elec. Supply, Inc. v. Poteete*, 321 Ark. 516, 905 S.W.2d 831 (1995); *Brown v. Fountain Hill Sch. Dist.*, 67 Ark. App. 358, 1 S.W.3d 27 (1999); *Rudd v. Pulaski County Special Sch. Dist.*, 341 Ark. 794, 20 S.W.3d 310 (2000).

21-9-302. Tort liability — Settlement of claims.

Each county, municipal corporation, school district, special improvement district, or any other political subdivision of the state is authorized to provide for hearing and settling tort claims against it.

History. Acts 1969, No. 165, § 2; A.S.A. 1947, § 12-2902.

RESEARCH REFERENCES

UALR L.J. Survey — Torts, 10 UALR L.J. 609.

CASE NOTES

Constitutionality.

This section authorizes political subdivisions to hear and settle tort claims if they choose to do so; this authorization serves a legitimate governmental purpose and does not violate the equal protection clause of U.S. Const. Amend. 14. *Lacey v. Bekaert Steel Wire Corp.*, 619 F. Supp.

1234 (W.D. Ark. 1985), *aff'd*, 799 F.2d 434 (8th Cir. 1986).

Cited: *Hardin v. City of DeValls Bluff*, 256 Ark. 480, 508 S.W.2d 559 (1974); *Bigelow v. Union County*, 287 Ark. 486, 701 S.W.2d 125 (1985); *Waire v. Joseph*, 308 Ark. 528, 825 S.W.2d 594 (1992).

21-9-303. Motor vehicle liability insurance required — Minimum amounts.

(a) All political subdivisions shall carry liability insurance on their motor vehicles or shall become self-insurers, individually or collectively, for their vehicles, or both, in the minimum amounts prescribed in the Motor Vehicle Safety Responsibility Act, § 27-19-101 et seq.

(b) The combined maximum liability of local government employees, volunteers, and the local government employer in any action involving

the use of a motor vehicle within the scope of their employment shall be the minimum amounts prescribed in the Motor Vehicle Safety Responsibility Act, § 27-19-101 et seq., unless the political subdivision has purchased insurance coverage or participates in a self-insurance pool providing for an amount of coverage in excess of the minimum amounts prescribed in the Motor Vehicle Safety Responsibility Act, § 27-19-101 et seq., in which event the maximum liability of the insurer or pool shall be the limits of the coverage provided for in the policy or agreement.

(c)(1) Any person who suffers injury or damage to person or property caused by a motor vehicle operated by an employee, agent, or volunteer of a local government covered by this section shall have a direct cause of action against the insurer if insured, or the governmental entity if uninsured, or the trustee or chief administrative officer of any self-insured or self-insurance pool.

(2) Any judgment against a trustee or administrator of a self-insurance pool shall be paid from pool assets up to the maximum limit of liability as provided in this section.

History. Acts 1969, No. 165, § 3; 590, § 1; 1987, No. 1064, § 1; 1989 (3rd A.S.A. 1947, § 12-2903; Acts 1987, No. Ex. Sess.), No. 47, § 1.

RESEARCH REFERENCES

Ark. L. Rev. City of Caddo Valley v. George: Stop or I'll Sue! Police Chases and the Price Cities May Pay, 55 Ark. L. Rev. 425 (2002).

UALR L.J. Survey — Insurance, 10 UALR L.J. 587.

Survey — Torts, 10 UALR L.J. 609.

CASE NOTES

ANALYSIS

Purpose.
Failure to carry insurance.
Instructions.
Liability.
Nonregistered vehicles.
Political subdivision.
Workers' compensation.

Purpose.

In order that persons injured by a political subdivisions' vehicles may have redress for negligence, this section requires political subdivisions to carry liability insurance on their motor vehicles. *King v. Little Rock Sch. Dist.*, 301 Ark. 148, 782 S.W.2d 574 (1990).

The legislature did not intend for a school district to insure a bus that was owned by an independent entity, operated by a driver who was not employed or hired by the district, and chartered for a one day field trip. *King v. Little Rock Sch. Dist.*, 301 Ark. 148, 782 S.W.2d 574 (1990).

Failure to Carry Insurance.

Regardless of statutory governmental tort immunity, city which failed to conform to this section was responsible as self-insurer for injuries resulting from negligent operation of its vehicles up to amount equivalent to required policy limits stated in § 27-19-713. *Sturdivant v. Farmington*, 255 Ark. 415, 500 S.W.2d 769 (1973).

The holding in *Sturdivant v. City of Farmington*, 255 Ark. 415, 500 S.W.2d 769 (1973), which made school districts self-insurers when they did not carry insurance, is not unconstitutional as a violation of the separation of powers doctrine of Ark. Const., Art. 4, § 2. *Thompson v. Sanford*, 281 Ark. 365, 663 S.W.2d 932 (1984).

Instructions.

In personal injury action against school district and its employee, employee was not entitled to instruction on district's limited liability, and the trial court was

right to wait until the jury had determined liability and damages before applying this section as interpreted by *Sturdivant v. City of Farmington*, 255 Ark. 415, 500 S.W.2d 769 (1973). *Thompson v. Sanford*, 281 Ark. 365, 663 S.W.2d 932 (1984).

Liability.

A city is not immune to the extent that it has liability insurance. *City of Caddo Valley v. George*, 340 Ark. 203, 9 S.W.3d 481 (2000).

Because there were two emergency vehicles involved in the accident and each officer was found five percent at fault, the city, as a joint tortfeasor, would be jointly and severally liable in the amount of \$25,000.00 for each of the city's vehicles; therefore, defendant should have recovered \$50,000.00 against the city, and the trial court erred in ruling otherwise. *City of Caddo Valley v. George*, 340 Ark. 203, 9 S.W.3d 481 (2000).

Trial court did not err in reducing a jury's award of \$92,500 for bodily injury to a motorcyclist against a city in a negligence action involving a city-owned garbage truck to \$25,000, the maximum amount of its liability under the state's tort immunity law and subsection (b) of this section. *Fritzinger v. Beene*, 80 Ark. App. 416, 97 S.W.3d 440 (2003).

Nonregistered Vehicles.

The General Assembly, in requiring political subdivisions to purchase motor vehicle liability insurance, never intended nonregistered vehicles to be covered. *Cousins v. Dennis*, 298 Ark. 310, 767 S.W.2d 296 (1989).

Self-propelling mowers and other equipment not designed or intended for transportation purposes — being exempt from registration — are not required to comply with the security deposit or liability insurance provisions required under the Motor Vehicle Safety Responsibility Act. *Cousins*

v. Dennis, 298 Ark. 310, 767 S.W.2d 296 (1989).

This section does not require political subdivisions to purchase motor vehicle liability insurance for non-registered vehicles. *Clark v. Randolph County*, 71 Ark. App. 112, 36 S.W.3d 353 (2000).

Summary judgment was improperly granted in favor of a city and its employee in a negligence action based on governmental immunity where there was a genuine issue of material fact as to whether the operation of the loader on public roads was frequent and regular or merely incidental and, thus, whether the front-end loader was exempted from the statutory definition of "motor vehicle." *Spears v. City of Fordyce*, 351 Ark. 305, 92 S.W.3d 38 (2002).

Political Subdivision.

If a political subdivision fails to carry liability insurance on its motor vehicles it becomes, in effect, a self-insurer and may be held liable for an amount not to exceed the minimum amounts of coverage prescribed by the Motor Vehicle Safety Responsibility Act. *King v. Little Rock Sch. Dist.*, 301 Ark. 148, 782 S.W.2d 574 (1990).

Workers' Compensation.

Where teachers were acting within the scope of their employment at time of school bus accident, injured teachers' exclusive remedy was to file claims under the Workers' Compensation Act and they were not entitled to any part of the school district's insurance policy proceeds. *Helms v. Southern Farm Bureau Cas. Ins. Co.*, 281 Ark. 450, 664 S.W.2d 870 (1984).

Cited: *Sullivan v. Pulaski County*, 247 Ark. 259, 445 S.W.2d 94 (1969); *Hardin v. City of DeValls Bluff*, 256 Ark. 480, 508 S.W.2d 559 (1974); *Augustine v. City of W. Memphis*, 281 Ark. 162, 662 S.W.2d 813 (1984); *Lacey v. Bekaert Steel Wire Corp.*, 619 F. Supp. 1234 (W.D. Ark. 1985); *City of Little Rock v. Weber*, 298 Ark. 382, 767 S.W.2d 529 (1989).

21-9-304. Indemnification by state for certain actions.

(a) When any city of the first class, city of the second class, incorporated town, county, and its employees are called upon to assist the state and its employees and, as a result, are sued for their actions performed under the supervision of a state official or employee, the Attorney General shall defend the city of the first class, city of the second class, incorporated town, county, and its employees.

(b) Should a judgment be rendered against the city of the first class, city of the second class, incorporated town, county, or its employees, the state shall pay actual, but not punitive, damages adjudged by a state or federal court, or entered by the court as a result of a compromise settlement approved and recommended by the Attorney General, based on an act or omission by the officer or employee while acting without malice and in good faith within the course and scope of his or her employment and in performance of his or her official duties.

(c)(1) When cities of the first class, cities of the second class, incorporated towns, counties, and their employees are covered by any contract of insurance providing for legal defense, the cities of the first class, cities of the second class, incorporated towns, counties, their employees, and their insurers are not entitled to legal defense by the Attorney General.

(2) Any judgment rendered against the cities of the first class, cities of the second class, incorporated towns, counties, their employees, or their insurers shall be paid by the state only to the extent that the judgment amount exceeds the limits of liability established in the contract of insurance.

History. Acts 1983, No. 711, § 1; A.S.A. 1947, § 12-3407; Acts 1987, No. 820, § 1.

RESEARCH REFERENCES

UALR L.J. Survey — Miscellaneous, 10
UALR L.J. 593.

CHAPTER 10

UNIFORM FACSIMILE SIGNATURES OF PUBLIC OFFICIALS ACT

SECTION.

21-10-101. Definitions.

21-10-102. Use of facsimile signature authorized — Filing required.

21-10-103. Use of facsimile seal.

21-10-104. [Reserved.]

SECTION.

21-10-105. Construction.

21-10-106. Title.

21-10-107. Severability.

21-10-108. Inconsistent acts repealed.

21-10-109. [Reserved.]

Effective Dates. Acts 1983, No. 564, § 2: Mar. 21, 1983. Emergency clause provided: "It is hereby found and determined that the provisions of recently enacted federal legislation, including the Tax Equity and Fiscal Responsibility Act of 1982, have created a serious uncertainty as to the manner in which public securities, including bonds, notes, certificates of in-

debtedness or other obligations for the payment of money, issued by the State of Arkansas or by any of its departments, agencies, or other instrumentalities or by any of its political subdivisions, should be executed and that such uncertainty threatens to delay projects being financed by such securities and to make such financings more expensive, thereby jeop-

ardizing the ability of residents of the State of Arkansas to realize the benefits to be obtained from such projects, and it is further found that the immediate passage of this Act is necessary to resolve such uncertainties and to assist citizens of the State of Arkansas in obtaining the bene-

fits from such projects. Therefore, an emergency is declared to exist, and this Act, being necessary for the immediate preservation of the public peace, health and safety of the citizens of the State of Arkansas, shall be in full force and effect from and after its passage and approval."

21-10-101. Definitions.

As used in this chapter:

(a) "Public security" means a bond, note, certificate of indebtedness, or other obligation for the payment of money, issued by this state or by any of its departments, agencies, or other instrumentalities, or by any of its political subdivisions;

(b) "Instrument of payment" means a check, draft, warrant, or order for the payment, delivery, or transfer of funds;

(c) "Authorized officer" means any official of this state or any of its departments, agencies, or other instrumentalities, or any of its political subdivisions whose signature to a public security or instrument of payment is required or permitted;

(d) "Facsimile signature" means the reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

History. Acts 1959, No. 69, § 1; A.S.A. 1947, § 12-2601.

RESEARCH REFERENCES

Ark. L. Rev. Carroll, Uniform Laws in Arkansas, 52 Ark. L. Rev. 313.

21-10-102. Use of facsimile signature authorized — Filing required.

Any authorized officer may, after filing with the Secretary of State his manual signature certified by him under oath, execute or cause to be executed with a facsimile signature in lieu of his manual signature:

(a) Any public security; and

(b) Any instrument of payment.

Upon compliance with this chapter by the authorized officer, his facsimile signature has the same legal effect as his manual signature and shall be deemed to comply with any statute requiring a manual signature.

History. Acts 1959, No. 69, § 2; 1983, No. 564, § 1; A.S.A. 1947, § 12-2602.

21-10-103. Use of facsimile seal.

When the seal of this state or any of its departments, agencies, or other instrumentalities, or of any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

History. Acts 1959, No. 69, § 3; A.S.A. 1947, § 12-2603.

21-10-104. [Reserved.]

Publisher's Notes. The Uniform Facsimile Signatures of Public Officials Act (U.L.A.) § 4, which was repealed in Arkansas by Acts 1975, No. 928, § 4, was a penalty clause.

21-10-105. Construction.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of states which enact it.

History. Acts 1959, No. 69, § 5; A.S.A. 1947, § 12-2605.

21-10-106. Title.

This chapter may be cited as the "Uniform Facsimile Signature of Public Officials Act."

History. Acts 1959, No. 69, § 6; A.S.A. 1947, § 12-2606.

21-10-107. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

History. Acts 1959, No. 69, § 7; A.S.A. 1947, § 12-2606n.

21-10-108. Inconsistent acts repealed.

All acts and parts of acts are repealed insofar as inconsistent herewith.

History. Acts 1959, No. 69, § 8; A.S.A. 1947, § 12-2606n.

21-10-109. [Reserved.]

Publisher's Notes. The Uniform Facsimile Signatures of Public Officials Act

(U.L.A.) § 9, which was an effective date provision, was not adopted in Arkansas.

CHAPTER 11

EMPLOYEE SUGGESTION SYSTEM

SECTION.

21-11-101. Definition — Exceptions.

21-11-102. Penalty.

21-11-103. Employee Suggestion System established.

21-11-104. Rules and regulations — Procedure for submission of suggestions.

SECTION.

21-11-105. Suggestion Award Board.

21-11-106. Reports by Personnel Director.

21-11-107. Awards for suggestions.

21-11-108. Payment of awards.

21-11-109. Funding.

Effective Dates. Acts 1981, No. 856, § 14: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly that the immediate passage of this Act is necessary to prevent irreparable harm to the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 31, § 4: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1983 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an

extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1983 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1983."

Acts 1991, No. 1219, § 5: Apr. 10, 1991. Emergency clause provided: "It is hereby found and determined by the 78th General Assembly that the Employee Suggestion System rules and regulations be revised in order to more effectively administer this program. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval."

21-11-101. Definition — Exceptions.

As used in this chapter, "employee" shall mean all full-time state employees of all departments, agencies, boards, commissions, or other agencies of the state supported by appropriation of state or federal funds except the following excluded employees:

(1) The elected constitutional officers of this state, including employees of the office of the Governor;

(2) The General Assembly and its employees, including employees of the Bureau of Legislative Research of the Legislative Council and the Division of Legislative Audit;

(3) Members of the Supreme Court, circuit courts, and prosecuting attorneys;

(4) Members of the Governor's cabinet, agency directors, or other persons appointed by the Governor as head of a board or commission;

(5) Employees occupying a teaching or athletic coaching position at a state-supported institution of higher learning; and

(6) Those other employees designated as excluded from the provisions of this chapter by the rules and regulations established by the Personnel Director.

History. Acts 1981, No. 856, § 2;
A.S.A. 1947, § 12-4001.

21-11-102. Penalty.

Any cabinet member or head of a department, agency, board, commission, or other agency of state government who fails to comply with or implement a money-saving suggestions program as outlined in this chapter shall be deemed to be derelict in his or her duties and subject to dismissal.

History. Acts 1981, No. 856, § 12;
A.S.A. 1947, § 12-4012.

21-11-103. Employee Suggestion System established.

There is established a program to be known as the Employee Suggestion System to encourage the development of ideas for improving the economy and efficiency of state government, to grant awards for ideas of proper merit, and to implement them in the governmental process.

History. Acts 1981, No. 856, § 3;
A.S.A. 1947, § 12-4002.

21-11-104. Rules and regulations — Procedure for submission of suggestions.

(a) The Director of the Department of Finance and Administration, or his or her designee, is directed to develop and adopt rules and regulations in accordance with this chapter for the administration of the Employee Suggestion System.

(b)(1) The rules shall provide for the direct submission of all suggestions to the Office of Personnel Management's Employee Suggestion System for determination of eligibility under the rules and regulations as authorized in this section.

(2) Eligible suggestions will be forwarded to the department director, or to the department director's designated representative, for evaluation of proper merit.

(3) The names of individuals who make suggestions shall be kept confidential unless such person is granted an award under this chapter.

History. Acts 1981, No. 856, § 4;
A.S.A. 1947, § 12-4003.

21-11-105. Suggestion Award Board.

(a)(1) There is created the Suggestion Award Board.

(2) The membership of the board shall consist of the Director of the Department of Finance and Administration, the Personnel Director, who shall serve as chair, and the cochairs of the Legislative Council.

(b) The decisions of the board regarding suggestions, awards, and appeals shall be final and binding to all parties concerned.

(c)(1) The board will review suggestions after the suggestor has filed a formal appeal.

(2) If, in the opinion of the board, further evaluation is needed, the board may request the agency to reevaluate the suggestion.

History. Acts 1981, No. 856, § 5;
A.S.A. 1947, § 12-4004; Acts 1991, No.
1219, § 1.

21-11-106. Reports by Personnel Director.

(a) The Personnel Director shall prepare and annually transmit a report detailing the operations of the Employee Suggestion System, including an accounting of all awards granted and any other information deemed appropriate by the director and the Governor.

(b)(1) The director shall submit monthly to the Suggestion Award Board a list of all suggestions which have been at agencies for evaluation for a period exceeding thirty (30) days.

(2) The list shall show the suggestion number, the agency doing the evaluation, and the date the suggestion was sent to the agency for evaluation.

History. Acts 1981, No. 856, § 6;
A.S.A. 1947, § 12-4005.

21-11-107. Awards for suggestions.

(a)(1)(A) Any monetary award granted for a suggestion which may improve the economy and efficiency of state government shall be the greater of one hundred dollars (\$100) or ten percent (10%) of the amount of savings.

(B) However, the monetary award shall be limited to a maximum of five thousand dollars (\$5,000) unless a larger award is recommended by resolution of the General Assembly.

(2) If an employee's suggestion appears to be one which may improve the economy and efficiency of state government but would require legislative enactment, the suggestor shall receive a monetary award as prescribed in subsection (a) of this section based on the actual net savings after the end of the first year following implementation of the suggestion.

(b) When implementation of a suggestion would not result in cost reduction or avoidance but would visibly improve the operations of a process or program or improve public relations, safety, or effectiveness of operations as indicated in § 21-11-103, recognition of the suggestor will be made by the issuance of a suitable certificate and a monetary award of one hundred dollars (\$100).

History. Acts 1981, No. 856, §§ 7, 8, 11; A.S.A. 1947, §§ 12-4006, 12-4007, 12-4011; Acts 1991, No. 1219, § 2. **Cross References.** Overtime pay, § 19-4-1612.

21-11-108. Payment of awards.

(a) When it is determined by the Personnel Director that a monetary award is to be made under the rules of the Employee Suggestion System, he or she shall certify the amount to the Chief Fiscal Officer of the State.

(b) The Chief Fiscal Officer of the State shall cause a transfer to be made of the amount of moneys awarded from the fund from which the benefiting employee is being paid to the State Central Services Fund.

(c) Notwithstanding any other provisions of law, the Treasurer of State shall issue warrants to employees for approved suggestions in accordance with this chapter.

History. Acts 1981, No. 856, § 9; 1983, No. 31, § 2; A.S.A. 1947, §§ 12-4008, 12-4010.

21-11-109. Funding.

(a) No agency, board, or commission shall receive additional appropriations or funds to carry out this chapter except the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration, which shall be allocated funds and appropriations to administer it.

(b) All monetary awards prescribed in § 21-11-107(a) shall be made from the amount of appropriated money saved by the suggestions of employees.

(c) The minimum monetary award prescribed in § 21-11-107(b) shall be made from the agency's existing appropriation for the general maintenance and operation of the agency.

History. Acts 1981, No. 856, § 10; A.S.A. 1947, § 12-4009.

CHAPTER 12

TERMINATION OF SERVICE

- SUBCHAPTER.
- 1. GENERAL PROVISIONS.
 - 2. IMPEACHMENTS.
 - 3. REMOVAL OR SUSPENSION OF LOCAL OFFICERS.
 - 4. DELIVERY OF RECORDS TO SUCCESSOR.
 - 5. PRIVATIZATION OF STATE EMPLOYEE FUNCTIONS.

RESEARCH REFERENCES

ALR. Refusal to submit to polygraph examination as ground for discharge or suspension of public employees or officers. 15 ALR 4th 1207.

Am. Jur. 63C Am. Jur. 2d, Pub. Off., § 153 et seq.

C.J.S. 67 C.J.S., Officers, § 148 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

- | | |
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| SECTION. | SECTION. |
| 21-12-101. Limitation of employment for preparers of certain grant applications. | sifying employment application. |
| 21-12-102. Discharge of employee for fal- | 21-12-103. Dismissal of employee for prohibited discrimination. |

Cross References. Governor and all state officers, judges of the Supreme and circuit courts, chancellors, and prosecuting attorneys liable to impeachment, Ark. Const., Art. 15, § 1.

House of representatives has sole power of impeachment, Ark. Const., Art. 15, § 2.

21-12-101. Limitation of employment for preparers of certain grant applications.

(a) Persons whose principal function in state employment is to apply for or assist in the preparation of applications for state or federal grants shall not, for a period of one (1) year after leaving state employment, assist, for compensation, other persons applying for grants of state or federal funds.

(b) Any person violating this section shall be subject to a fine not exceeding five thousand dollars (\$5,000).

History. Acts 1983, No. 900, §§ 1, 2; A.S.A. 1947, §§ 12-2380, 12-2380.1.

21-12-102. Discharge of employee for falsifying employment application.

Any person who is employed by the State of Arkansas and who falsified the employment application by alleging to have earned a college degree which in fact was not earned shall be terminated from employment with the state.

History. Acts 1985, No. 620, § 1;
A.S.A. 1947, § 12-2381.

21-12-103. Dismissal of employee for prohibited discrimination.

(a) Every state agency shall include in its personnel manual a statement that discrimination by any officer or employee based upon race, creed, religion, national origin, age, sex, or gender shall constitute grounds for dismissal.

(b) When it is determined by any court of law that any employee of this state is guilty of discrimination based upon race, creed, religion, national origin, age, sex, or gender, such determination shall be grounds for dismissal from employment.

History. Acts 1995, No. 1301, §§ 1, 2;
1995, No. 1318, §§ 1, 2.

SUBCHAPTER 2 — IMPEACHMENTS

SECTION.

- 21-12-201. Definitions.
- 21-12-202. Suspension of impeached officer.
- 21-12-203. Initiation of proceedings.
- 21-12-204. Attendance of witnesses.

SECTION.

- 21-12-205. Depositions of witnesses.
- 21-12-206. Trial.
- 21-12-207. Transcript of proceedings.
- 21-12-208. Decision no bar to indictment.
- 21-12-209. Allocation of costs.

Effective Dates. Acts 1874 (Ex. Sess.),
No. 11, § 2: effective on passage.

RESEARCH REFERENCES

- Ark. L. Rev.** Official Misconduct under the Arkansas Criminal Code, 30 Ark. L. Rev. 160.
- Ark. L. Rev.** Comments: Removal and Discipline of Judges in Arkansas, Porter, 32 Ark. L. Rev. 545.
- UALR L.J.** Survey of Arkansas Law, Public Law, 1 UALR L.J. 230.

21-12-201. Definitions.

In this subchapter:

(1) "Articles of impeachment" means the written accusation of the officer, drawn up and approved by the House of Representatives. The articles shall state with reasonable certainty the misdemeanors in office

for which the officer is impeached, and, if there is more than one (1), the misdemeanors shall be stated separately and distinctly; and

(2) "Impeachment" means the prosecution, by the House of Representatives before the Senate, of the Governor or other civil officer for misdemeanor in office.

History. Crim. Code, §§ 389-391; C. & M. Dig., §§ 7248-7250; A.S.A. 1947, §§ 12-2201 — 12-2203.

CASE NOTES

Cited: *Rockefeller v. Hogue*, 244 Ark. 1029, 429 S.W.2d 85 (1968).

21-12-202. Suspension of impeached officer.

(a) When any officer shall be impeached, he or she is declared to be suspended from exercising his or her office, after he or she shall be notified thereof, until he or she is acquitted.

(b) If the President of the Senate be impeached, notice shall be immediately given by the House of Representatives to the Senate, that another President of the Senate may be appointed.

(c) In all cases of impeachment of any officer of this state, the Governor is authorized to appoint some suitable person to perform the functions of the office from which the officer is suspended until the case of impeachment is disposed of by trial or otherwise, according to law. The person so appointed shall receive the same salary and emoluments as the officer impeached.

History. Rev. Stat., ch. 75, §§ 3, 4; Acts 1874 (Ex. Sess.), No. 11, § 1, p. 14; C. & M. Dig., §§ 5609-5611; Pope's Dig., §§ 7254-7256; A.S.A. 1947, §§ 12-2206 — 12-2208.

21-12-203. Initiation of proceedings.

(a) When articles of impeachment have been approved by the House of Representatives and impeachment ordered, a committee shall be appointed to prosecute the impeachment, whose chair, within five (5) days, shall bring the same before the Senate.

(b) The Senate shall appoint a day for hearing the impeachment.

(c)(1) The accused shall be summoned by a precept issued by the Secretary of State to appear on that day.

(2) The precept shall be served by delivering a copy of the precept and of the articles of impeachment to the accused in person, if to be found, or by leaving the copies at his or her residence with some member of his or her family over sixteen (16) years of age.

(d)(1) Upon the appearance of the accused, he or she shall have reasonable time to answer the impeachment, and when the answer shall be filed, the committee may reply thereto.

(2) When issue shall be joined on any such impeachment, the Senate shall appoint a time for the trial.

(e) If the accused shall not appear after being notified, or after appearing shall fail to answer, the Senate may proceed ex parte.

History. Rev. Stat., ch. 75, §§ 7, 10; A.S.A. 1947, §§ 12-2204, 12-2205, 12-Crim. Code, §§ 392, 393; Acts 1871, No. 2209, 12-2215.
49, § 1[393], p. 255; C. & M. Dig., §§ 5606, 5607, 5618, 5619, 5622; Pope's Dig., §§ 7251-7253, 7263, 7264, 7267;

Cross References. Trial by senate, Ark. Const., Art. 15, § 2.

21-12-204. Attendance of witnesses.

(a) The Senate shall have power of coercing the attendance of witnesses and of compelling them to testify and of coercing the production of books and papers, by fine and imprisonment to such extent as shall be necessary.

(b)(1) The Secretary of the Senate, at the request of the chair of the committee prosecuting the impeachment, or of the accused, shall issue process for summoning witnesses and for producing books and papers.

(2) In case of disobedience of the process, the Senate shall order the clerk to issue process for arresting the witnesses and seizing the books and papers, which process may be executed by the peace officers of the counties or by officers especially appointed for that purpose by the Senate.

(c) Witnesses shall have the same compensation for travel and attendance, and the same exemption in going, remaining, and returning, as witnesses in the circuit courts.

(d) Officers executing the process and orders of the Senate shall have like fees for their services.

History. Crim. Code, §§ 394-396; C. & M. Dig., §§ 5612-5617; Pope's Dig., §§ 7257-7262; A.S.A. 1947, §§ 12-2210 — 12-2212.

Cross References. Summons for witnesses, § 10-2-307.

21-12-205. Depositions of witnesses.

(a) The President of the Senate, on the application of the accused, or any of his or her counsel, or of the chair of the committee prosecuting the impeachment, shall issue commissions to take depositions where the witness is unable to attend from sickness or other infirmity or where the witness is without the limits of the state.

(b) Depositions shall be taken in the same manner, and the same notice shall be given, as where depositions are to be taken in the circuit court.

History. Rev. Stat., ch. 75, §§ 8, 9; C. & M. Dig., §§ 5620, 5621; Pope's Dig., §§ 7265, 7266; A.S.A. 1947, §§ 12-2213, 12-2214.

Cross References. Committee empowered to take depositions, § 10-2-306.

Examination by interrogatories, § 10-2-308.

21-12-206. Trial.

(a) Before the Senate proceeds to try the impeachment, the President of the Senate and every Senator present shall take the following oath or affirmation: "I do solemnly swear or affirm that I will faithfully and impartially try the impeachment against A. B., and give my decision according to the law and evidence."

(b)(1) The members being sworn, the Senate shall proceed to hear, try, and determine the impeachment and may adjourn the trial to any other time.

(2) The Senate shall determine questions of law arising during the trial, upon the admissibility of evidence, the competency of witnesses, and otherwise.

(3) The Senate may punish any person for contempt committed toward the Senate or for obstructing the administration of justice on the trial, in as full a manner as any court of record could do for a like contempt toward the court.

(c) In all impeachment trials, the accused shall have a right to be heard by himself or herself and his or her counsel.

(d)(1) All votes on any question whatever shall be given viva voce and entered on the journals.

(2) No judgment or sentence of conviction shall be given against any person upon any impeachment without the concurrence of two-thirds ($\frac{2}{3}$) of the Senators elected.

(3) The Senate shall determine what amount of absence of a Senator during the trial shall exclude the Senator from voting in the final decision.

History. Rev. Stat., ch. 75, §§ 12, 13; Crim. Code, §§ 397, 398; C. & M. Dig., §§ 5623-5627; Pope's Dig., §§ 7268-7272; A.S.A. 1947, §§ 12-2216 — 12-2219.

Cross References. Chief justice to preside unless impeached or disqualified, Ark. Const., Art. 15, § 2.

Concurrence of two thirds of members

necessary for conviction, Ark. Const., Art. 15, § 2.

Judgment goes no further than removal from office and disqualification to hold state office, Ark. Const., Art. 15, § 1.

When sitting for purpose of impeachment, senators shall be upon oath or affirmation, Ark. Const., Art. 15, § 2.

21-12-207. Transcript of proceedings.

The Secretary of the Senate shall make out a transcript of the proceedings on impeachment and of the judgment of the Senate, whether of conviction or acquittal, which shall be signed by the officer presiding at the trial, attested by the Secretary of the Senate and deposited in the office of the Secretary of State.

History. Rev. Stat., ch. 75, § 15; C. & M. Dig., §§ 5631, 5632; Pope's Dig., §§ 7276, 7277; A.S.A. 1947, § 12-2223.

21-12-208. Decision no bar to indictment.

The party convicted or acquitted shall, notwithstanding such acquittal or conviction, be subject to indictment, trial, judgment, and punishment for any indictable offense, according to the law of the land.

History. Rev. Stat., ch. 75, § 14; C. & M. Dig., § 5630; Pope's Dig., § 7275; A.S.A. 1947, § 12-2222. **Cross References.** Impeachment no bar to indictment, Ark. Const., Art. 15, § 1.

21-12-209. Allocation of costs.

(a)(1) If the accused is acquitted, he or she shall be entitled to his or her costs, to be taxed by the Secretary of the Senate and paid by the Treasurer of State.

(2) If convicted, the accused shall pay the costs, to be taxed by the Secretary of the Senate, and recovered upon a motion by the Attorney General in the Pulaski County Circuit Court, at the first term thereof, without notice, or afterward on notice.

(b)(1) If the impeachment is prosecuted on the petition of some citizen of the state, whose name is set at the foot of the articles of impeachment, the petitioner shall be liable for the costs of the accused if he or she is acquitted and also for the costs of prosecuting the impeachment, and, in that case, the state shall not be liable to pay any part of the costs.

(2)(A) If the accused is convicted, the petitioner shall be entitled to recover from the accused the costs of the impeachment, for which the accused is liable.

(B) The costs shall be taxed by the Secretary of the Senate and recovered by suit in a court of competent jurisdiction.

History. Crim. Code, §§ 399, 400; C. & M. Dig., §§ 5628, 5629, 5633; Pope's Dig., §§ 7273, 7274, 7278; A.S.A. 1947, §§ 12-2220, 12-2221.

SUBCHAPTER 3 — REMOVAL OR SUSPENSION OF LOCAL OFFICERS

SECTION.

21-12-301. Suspension upon charge of shortage of funds.

21-12-302. Removal for conviction of certain offenses.

21-12-303. Appointment of temporary replacement.

SECTION.

21-12-304. Public service not grounds for termination, demotion, etc.

Effective Dates. Acts 1877, No. 63, § 5: effective on passage.

Acts 1971, No. 46, § 3: Feb. 4, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interests of the citizens of this State that competent

and qualified persons be encouraged to serve as members of the General Assembly, as election officials, and to do jury service, and at the same time, it is also beneficial that such persons be encouraged to serve in various offices and positions of employment in various counties,

cities and school districts in this State and while so serving should be protected from loss of their office or position of employment because of such service and that this act is immediately necessary to provide this essential protection. Therefore, an

emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from and after the date of its passage and approval."

RESEARCH REFERENCES

Ark. L. Rev. Official Misconduct under the Arkansas Criminal Code, 30 Ark. L. Rev. 160.

CASE NOTES

ANALYSIS

Acts done prior to present term.
County officers.

Acts Done Prior to Present Term.

A public officer is not subject to removal from office because of acts done prior to his present term of office. *Jacobs v. Parham*, 175 Ark. 86, 298 S.W. 483 (1927); *Rice v. State*, 204 Ark. 236, 161 S.W.2d 401 (1942).

This subchapter does not provide for the suspension of an officer on being indicted

for official misconduct during a prior term of office. *Montgomery v. Nowell*, 183 Ark. 1116, 40 S.W.2d 418 (1931).

County Officers.

Members of the county board of education and the county superintendent hold their offices for definite terms, have powers and duties coextensive with the county, and are "county officers" under this subchapter. *Cade v. State*, 185 Ark. 1150, 51 S.W.2d 857 (1932).

21-12-301. Suspension upon charge of shortage of funds.

(a)(1) Whenever any information or indictment shall be filed in any circuit court of this state against any county or township officer on any charge involving a shortage of funds in his or her office when the shortage has been reported by the Division of Legislative Audit, the circuit court shall immediately order that the officer be suspended from his or her office until the information or indictment is tried.

(2) The suspension shall not extend beyond the next term after the information or indictment is filed in the circuit court, unless the cause is continued on the application of the defendant.

(b)(1) Whenever any such officer is confined in a jail on a charge involving a shortage of funds in his or her office when the shortage has been reported by the division, he or she shall be suspended from office by the circuit court upon the filing of information of the imprisonment.

(2) The suspension shall last until the officer is discharged from prison by due process of law, on bail, or otherwise.

History. Acts 1877, No. 63, §§ 1, 3, p. 64; C. & M. Dig., §§ 10335, 10337; Pope's Dig., §§ 14335, 14337; Acts 1963, No. 83, §§ 1, 3; A.S.A. 1947, §§ 12-2101, 12-2103.

Cross References. Action to prevent exercise of office by usurper, § 16-118-105.

Circuit court, jurisdiction to remove county or township officers, Ark. Const., Art. 7, § 27.

CASE NOTES

ANALYSIS

Constitutionality.

Salary during suspension.

Constitutionality.

This section is constitutional. *Sumpter v. State*, 81 Ark. 60, 98 S.W. 719 (1906).

Salary During Suspension.

Suspended officer is not entitled to salary during time of suspension from office though acquitted of the charge. *Gray v. Independence County*, 166 Ark. 502, 266 S.W. 465 (1924).

21-12-302. Removal for conviction of certain offenses.

(a) Upon conviction of any county or township officer for an offense involving incompetency, corruption, gross immorality, criminal conduct amounting to a felony, malfeasance, misfeasance, or nonfeasance in office, a part of the sentence of the circuit court having jurisdiction shall be to remove such officer from office.

(b) The clerk of the court at the close of the term shall transmit to the Governor a certified transcript of the information or indictment, with the judgment of the court thereon.

(c) The vacancy shall be filled as may be prescribed by law at the time the vacancy occurs.

History. Acts 1877, No. 63, § 2, p. 64; § 14336; Acts 1963, No. 83, § 2; A.S.A. C. & M. Dig., § 10336; Pope's Dig., 1947, § 12-2102.

CASE NOTES

Grounds.

Permitting prisoner to escape is within the meaning of malfeasance as used in this section. *Haupt v. State*, 100 Ark. 409, 140 S.W. 294 (1911).

A constable may be suspended for any "criminal conduct amounting to a felony" whether amounting to official misconduct or not. *Jones v. State*, 104 Ark. 261, 149 S.W. 56 (1912).

Drunkenness does not constitute gross immorality. *McClain v. Sorrells*, 152 Ark. 321, 238 S.W. 72 (1922).

Sheriff was properly suspended for failure to arrest persons known by him to be operating gambling devices. *Mays v. Robertson*, 172 Ark. 279, 288 S.W. 382 (1926).

Conviction of a county judge for attempting to bribe a witness to withhold evidence was sufficient to remove him from office. *Kirkpatrick v. State*, 177 Ark. 1124, 9 S.W.2d 574 (1928).

Cited: *Campbell v. State*, 300 Ark. 570, 781 S.W.2d 14 (1989).

21-12-303. Appointment of temporary replacement.

(a) Whenever any county or township officer is suspended from office on account of any information or indictment pending against him or her, the Governor may temporarily appoint an officer in his or her place who shall hold the office until the disability of the officer so suspended is removed, or an election to fill the vacancy occurs, in case there is a judgment of removal.

(b) Should a vacancy occur in the office of sheriff or clerk during the session of any court of record, the court may appoint some competent

person to perform, temporarily, the duties of the office until the Governor makes an appointment as required by this section.

History. Acts 1877, No. 63, § 4, p. 64; C. & M. Dig., § 10338; Pope's Dig., § 14338; A.S.A. 1947, § 12-2104.

CASE NOTES

Sheriff As Ex Officio Collector.

Where a sheriff who was ex officio collector was suspended from office until a pending indictment against him could be tried and another was appointed to act as sheriff during the time of his suspension, it was the duty of the sheriff, though suspended, to qualify as collector and,

upon his failure to do so, the Governor was authorized to appoint a collector who would hold office until the next general election and until his successor could be elected and qualified. *Remley v. Matthews*, 84 Ark. 598, 106 S.W. 482 (1907).

21-12-304. Public service not grounds for termination, demotion, etc.

(a) The employment of an employee of any county, city, or school district in the State of Arkansas shall not be terminated by discharge, failure to renew contract, abolition of position, demotion, or transfer upon the grounds of or because of the service of the employee as a member of the General Assembly, as an election official, as a juror, as an elected official of any office which is not otherwise prohibited by the Arkansas Constitution, or in the performance of any duty required under the laws of this state.

(b)(1) If any official of any county, city, or school district in this state violates the provisions of subsection (a) of this section, the official shall be guilty of malfeasance in office and shall forfeit his or her office or position of employment and shall be guilty of a misdemeanor.

(2) Upon conviction, he or she shall be subject to a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) and imprisonment for not less than ten (10) days nor more than thirty (30) days.

History. Acts 1971, No. 46, §§ 1, 2; A.S.A. 1947, §§ 12-2105, 12-2106.

SUBCHAPTER 4 — DELIVERY OF RECORDS TO SUCCESSOR

SECTION.

- 21-12-401. Officer to deliver official records — Penalty for non-compliance.
- 21-12-402. Private person to deliver official records — Penalty for noncompliance.
- 21-12-403. Issuance of warrant to seize and deliver records.

SECTION.

- 21-12-404. Notice of application for warrant.
- 21-12-405. Power of officer executing warrant.
- 21-12-406. Failure to execute warrant — Penalty.
- 21-12-407. Remedy of person aggrieved by warrant.

Cross References. Delivery of digests, acts, and journals to successor in office, § 25-18-207.

RESEARCH REFERENCES

Ark. L. Rev. Comments: Removal and Discipline of Judges in Arkansas, Porter, 32 Ark. L. Rev. 545 (1978).

21-12-401. Officer to deliver official records — Penalty for non-compliance.

(a)(1) If any civilian or military officer having any records, books, or papers appertaining to any public office resigns, or his or her office becomes vacant, he or she shall deliver to his or her successor all records, books, and papers.

(2) When any officer dies before delivering the records, books, and papers, his or her executor or administrator shall deliver such records, books, and papers to his or her successor.

(b) If any officer, or the executor or administrator of any officer, shall fail to deliver the records, books, and papers, he or she shall forfeit any sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) to be recovered by civil action, information, or indictment for the use of the county, and he or she shall pay to the person injured by the detention of records, books, and papers all damages which he or she may have sustained in consequence of the detention.

History. Rev. Stat., ch. 121, §§ 1-3; C. §§ 10928-10930; A.S.A. 1947, §§ 12-2001 & M. Dig., §§ 8332[a]-8334; Pope's Dig., — 12-2003.

21-12-402. Private person to deliver official records — Penalty for noncompliance.

If any private person shall have or obtain possession of any books, records, or papers appertaining to any public officer, he or she shall deliver them to the officer entitled to them, and if he or she fails so to do, he or she shall be proceeded against in all respects as is provided in this subchapter in cases of officers.

History. Rev. Stat., ch. 121, § 10; C. & M. Dig., § 8341; Pope's Dig., § 10937; A.S.A. 1947, § 12-2010.

21-12-403. Issuance of warrant to seize and deliver records.

If any person whose office has become vacant, or his or her executor or administrator shall fail to deliver any record, book, or paper to the person entitled to them, any judge of the Supreme Court or circuit court, upon the affidavit of any creditable person, setting forth the facts,

may issue a warrant directed to some sheriff or coroner, commanding him or her to seize all the records, books, and papers appertaining to the office, and deliver them to the proper officer, who shall be named in the warrant.

History. Rev. Stat., ch. 121, § 4; C. & M. Dig., § 8335; Pope's Dig., § 10931; A.S.A. 1947, § 12-2004.

21-12-404. Notice of application for warrant.

If any person shall hold over, or refuse to deliver, records, books, or papers appertaining to an office shall first have notice of the time and place of the application for a warrant to show cause, if any, why the warrant under § 21-12-403 should not be issued.

History. Rev. Stat., ch. 121, § 5; C. & M. Dig., § 8336; Pope's Dig., § 10932; A.S.A. 1947, § 12-2005.

21-12-405. Power of officer executing warrant.

The officer executing the warrant issued under § 21-12-403 may break open any doors or other places in which any records, books, or papers named in the warrant may be, or in which he or she may suspect them to be, and may arrest any person who shall resist the execution of the warrant and bring him or her before a judge or justice of the peace for obstructing the execution of process.

History. Rev. Stat., ch. 121, § 6; C. & M. Dig., § 8337; Pope's Dig., § 10933; A.S.A. 1947, § 12-2006.

21-12-406. Failure to execute warrant — Penalty.

Any officer to whom a warrant issued under § 21-6-403 may be directed and delivered who shall fail to execute or return the warrant or perform any duty required of him or her shall forfeit to the use of the county any sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), to be recovered by indictment.

History. Rev. Stat., ch. 121, § 7; C. & M. Dig., § 8338; Pope's Dig., § 10934; A.S.A. 1947, § 12-2007.

21-12-407. Remedy of person aggrieved by warrant.

(a) Any person aggrieved by a warrant issued under § 21-6-403 may apply to any judge of the Supreme Court or circuit court, who, upon the affidavit of the applicant that injustice has been done or is about to be done by such warrant, shall issue a citation to all persons interested, commanding them to appear before him or her at a time and place named in the citation, which shall be served by the sheriff or coroner.

(b) The judge issuing the citation shall have power to enforce obedience by attachment. The judge shall proceed in a summary manner, determine according to right and justice, and may issue his or her warrant for the restoration of any books, records, or papers found to have been improperly seized.

History. Rev. Stat., ch. 121, §§ 8, 9; C. §§ 10935, 10936; A.S.A. 1947, §§ 12- & M. Dig., §§ 8339, 8340; Pope's Dig., 2008, 12-2009.

SUBCHAPTER 5 — PRIVATIZATION OF STATE EMPLOYEE FUNCTIONS

SECTION.

21-12-501. Intent.

21-12-502. State agencies required to report privatization of a function.

21-12-503. Eliminated positions to be re-

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moved from budget.

21-12-504. State agencies required to report impending layoffs of state employees.

21-12-501. Intent.

It is the intent of this subchapter to require state agencies, institutions, boards, and commissions to provide notice to the Legislative Council and the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration of impending layoffs of state employees due to privatization.

History. Acts 1999, No. 17, § 1.

21-12-502. State agencies required to report privatization of a function.

(a)(1) Any state agency, institution, board, or commission which privatizes a function previously performed by state employees shall file a report as soon as possible with the Legislative Council and the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration.

(2) The report shall include the job titles, grades, and position numbers which were eliminated by privatization.

(3) The report shall also explain how the determination was made as to which employees were terminated and give the effective date of termination.

(b) The agency, institution, board, or commission shall not fill the positions of the state employees terminated due to privatization.

History. Acts 1999, No. 17, § 2.

21-12-503. Eliminated positions to be removed from budget.

The Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration and the Bureau of Legislative Research shall ensure that the eliminated

positions are removed from the agency, institution, board, or commission budget for the next biennium.

History. Acts 1999, No. 17, § 3.

21-12-504. State agencies required to report impending layoffs of state employees.

(a) Any state agency, board, or commission that announces a layoff of state employees shall file a report as soon as possible with the Legislative Council and the Office of Personnel Management of the Division of Management Services of the Department of Finance and Administration.

(b) The report shall include the job titles and programs involved in the impending layoff.

(c) It is the responsibility of the office and the Bureau of Legislative Research to ensure that the eliminated positions are removed from the agency's, institution's, board's, or commission's budget for the next biennium.

(d) This section does not apply to institutions of higher education.

History. Acts 2003, No. 1212, § 1.

CHAPTER 13

STATE AND LOCAL GOVERNMENT VOLUNTEERS ACT

SECTION.

- 21-13-101. Title.
- 21-13-102. Legislative intent.
- 21-13-103. Definitions.
- 21-13-104. No legal claim created — Exceptions.
- 21-13-105. Development of programs — Use of volunteers.
- 21-13-106. Exemption from employment laws.

SECTION.

- 21-13-107. Meals, lodging, and transportation.
- 21-13-108. Liability insurance — Sovereign immunity.
- 21-13-109. Employment experience.
- 21-13-110. Department reports or records.
- 21-13-111. State income tax deductions.

Cross References. Division of Volunteerism, § 25-10-128.

CASE NOTES

Cited: Sloan v. Voluntary Ambulance Serv., 37 Ark. App. 138, 826 S.W.2d 296 (1992).

21-13-101. Title.

This chapter may be cited as the "State and Local Government Volunteers Act".

History. Acts 1981, No. 42, § 1; A.S.A. 1947, § 12-3701.

21-13-102. Legislative intent.

(a) Since the spirit of volunteerism has long animated generations of citizens of this state and throughout the nation to give of their time and abilities to help others, the State of Arkansas would be wise to make use of volunteers in state and local agencies whenever possible.

(b) Effective use of volunteers in state service, however, requires that state and local agencies be provided guidelines for the development of volunteer programs and the utilization of volunteers.

(c) The General Assembly intends by this chapter to assure that the people of Arkansas may derive optimal benefit from volunteers and that the time and talents of volunteers in state and local service may be put to the best use.

History. Acts 1981, No. 42, § 1; A.S.A. 1947, § 12-3701.

21-13-103. Definitions.

As used in this chapter:

(1) "Department" means all agencies, departments, institutions, and divisions of state government and agencies under the jurisdiction or supervision of the State of Arkansas or of any political subdivision or school district in this state;

(2) "Material donor" means any person who, without financial gain, provides funds, materials, employment, or opportunities to clients of agencies, instrumentalities, political subdivisions, or school districts of the State of Arkansas;

(3) "Occasional-service volunteer" means any person who provides a one-time or occasional volunteer service;

(4) "Regular-service volunteer" means any person engaged in specific volunteer service activities on an ongoing or continuing basis; and

(5) "Volunteer" means any person who, of his or her own free will, provides goods or services without any financial gain to any agency, instrumentality, political subdivision, or school district of the State of Arkansas.

History. Acts 1981, No. 42, § 2; A.S.A. 1947, § 12-3702.

21-13-104. No legal claim created — Exceptions.

Nothing in this chapter shall be deemed to provide a lawful claim or right of volunteers for meals, lodging, transportation, or liability insurance coverage, unless each of the respective departments has:

- (1) Made provision for such benefits;
- (2) Established appropriate safeguards for eligibility for the benefits; and
- (3) Determined that sufficient funds are available to the department to defray the cost of the benefits.

History. Acts 1981, No. 42, § 5; A.S.A. 1947, § 12-3705.

21-13-105. Development of programs — Use of volunteers.

(a) Every department, through its executive head, is authorized to develop volunteer programs and accept the services of volunteers, including regular-service volunteers, occasional-service volunteers, or material donors to assist in programs carried out or administered by that department.

(b) Each department which utilizes the services of volunteers may:

- (1) Enlist the services of the Division of Volunteerism in the Department of Human Services to assist in the development of volunteer programs;
- (2) Take actions as are necessary and appropriate to develop meaningful opportunities for volunteers involved in those programs and to improve public services;
- (3) Develop written rules governing recruitment, training, screening, responsibility, utilization, and supervision of volunteers;
- (4) Take action as is necessary to ensure that volunteer and paid staff of the department understand their respective duties and responsibilities, their relationship to each other, and their respective roles in fulfilling the objectives of their department;
- (5) Take actions as are necessary and appropriate to assure a receptive climate to attract citizen volunteers; and
- (6) Provide for the recognition of volunteers who have offered exceptional service to the state, its political subdivisions, or school districts.

History. Acts 1981, No. 42, §§ 3, 4; A.S.A. 1947, §§ 12-3703, 12-3704.

Cross References. Division of Volunteerism, § 25-10-128.

21-13-106. Exemption from employment laws.

(a) Volunteers recruited, trained, or accepted by any department shall, to the extent of their volunteer service, be exempted from all provisions of law relative to state employment, hours of work, return or compensation, leave time, and employee benefits.

(b) Volunteers shall, however, at all times comply with applicable work rules.

History. Acts 1981, No. 42, § 3; A.S.A. 1947, § 12-3703.

21-13-107. Meals, lodging, and transportation.

(a)(1) Every department which utilizes the services of volunteers is authorized to provide volunteers with incidental reimbursements as are consistent with allowances authorized by law for reimbursement for state or local employees.

(2) Such reimbursements include transportation costs, lodging, and subsistence, as the department deems appropriate, to assist volunteers in performing their duties, provided that sufficient funds are available.

(b)(1)(A) Departments may furnish meals without charge to regular-service volunteers, provided that the scheduled work assignments of such volunteers extend over an established meal period.

(B) Meals may be furnished without charge to occasional-service volunteers at the discretion of the department's executive head.

(2) Lodging, if available, may be provided temporarily at no charge to regular-service volunteers, at the discretion of each department.

(3)(A)(i) Transportation reimbursement may be furnished to those volunteers whose presence is determined to be necessary to the department.

(ii) Rates or amounts of such reimbursement shall not exceed the allowances provided under applicable state travel regulation for state departments or under applicable travel regulations with respect to volunteer services rendered departments of political subdivisions and school districts.

(B) Volunteers may utilize department vehicles in the performance of their duties, subject to the rules and regulations governing use of state vehicles by paid staff.

History. Acts 1981, No. 42, §§ 3, 5; A.S.A. 1947, §§ 12-3703, 12-3705.

21-13-108. Liability insurance — Sovereign immunity.

(a) Liability insurance may be provided by the department utilizing volunteer services, both to regular-service and occasional-service volunteers, to the same extent as may be provided by the department to its paid staff.

(b) Volunteers in state service may enjoy the protection of the state's sovereign immunity to the same extent as paid staff.

History. Acts 1981, No. 42, § 5; A.S.A. 1947, § 12-3705.

21-13-109. Employment experience.

(a) Each department which utilizes the services of volunteers may recognize prior volunteer service as partial fulfillment of state employ-

ment requirements for training and experience established under applicable personnel rules and regulations.

(b) The Department of Finance and Administration and the personnel administrators of the respective departments shall make provision for the listing of volunteer service and experience on all future personnel forms and other records kept in the future, reflecting work history so that appropriate credit may be given in evaluating work history and in making position evaluations.

History. Acts 1981, No. 42, § 4; A.S.A. 1947, § 12-3704.

21-13-110. Department reports or records.

Each department shall include in its annual report, or shall maintain in its files, information which may be developed and maintained by volunteers relating to:

(1) The total number, location, and duties of all volunteers, including regular-service volunteers, occasional-service volunteers, and material donors;

(2) The total number of annual hours of service provided to the department by all volunteers, including regular-service volunteers, occasional-service volunteers, and material donors; and

(3) Reimbursements made to volunteers or material donors for expenses, transportation, or other costs incurred in connection with volunteer services, and such other records as may be required, for tax purposes, to authenticate services rendered and expenses incurred by volunteers or material donors for which reimbursement has not been made.

History. Acts 1981, No. 42, § 6; A.S.A. 1947, § 12-3706.

21-13-111. State income tax deductions.

(a) In computing net income for the purpose of the Arkansas income tax levied by § 26-51-201, there shall be allowed as deductions, in addition to all other deductions allowed by law:

(1)(A) A deduction for mileage for necessary travel in connection with voluntary service to a department, at the rate provided by law or appropriate travel regulation applicable to travel made by paid employees of a department for a volunteer who uses his or her personal motor vehicles for official travel, for which the volunteer has not received reimbursement from public funds; and

(B) A deduction for unreimbursed meals, lodging, and transportation other than mileage as noted above, or other out-of-pocket expenses incurred by the volunteer in voluntary service to a department for which he or she has not received reimbursement from public funds, but which would be reimbursable if incurred by paid employees of a department acting within the scope of their employment;

(2)(A) A deduction for mileage traveled in the use of a personal motor vehicle and for expenses incurred for meals, lodging, and transportation expenses other than mileage, and other out-of-pocket expenses incurred by a volunteer for volunteer work for a charitable organization for which reimbursement has not been received shall be allowed in the same amount and for the same purposes as now allowed under the state income tax laws applicable to business expenses.

(B) As used in subdivision (a)(2) of this section, "charitable organization" shall include, in addition to a department, any private nonprofit corporation, association, or group which is recognized by the laws of this state as performing a nonprofit charitable purpose benefiting citizens of this state.

(b) It is the purpose and intent of this section that deduction for expenses incurred by volunteers in connection with the performance of voluntary services for charitable organizations in this state and for public agencies and departments as authorized in this chapter shall be deductible in computing net income under the Arkansas individual income tax law, for the same purposes and in the same manner as now provided by the state income tax law applicable to business expenses in computing net income for state income tax purposes.

History. Acts 1981, No. 42, § 7; A.S.A. 1947, § 12-3707.

Publisher's Notes. Acts 1981, No. 42, § 9, provided that this section should be applicable for the tax year commencing January 1, 1981, or for any tax year com-

mencing in 1981, if the taxpayer reports income for a tax year other than a calendar year, and for each such tax year thereafter.

Cross References. Income tax deductions, § 26-51-415 — 26-51-430.

CHAPTER 14

NOTARIES PUBLIC

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. FACSIMILE SIGNATURES AND SEALS.

A.C.R.C. Notes. Due to the addition of Subchapter 2 by Acts 1995, No. 200, the preexisting provisions of this chapter have been designated as Subchapter 1.

Cross References. Fees, § 21-6-309.

Members of building and loan association may act as, § 23-38-207.

Officers of bank may act as, § 23-48-324.

RESEARCH REFERENCES

Am. Jur. 58 Am. Jur. 2d, Notaries, § 1 et seq.

C.J.S. 66 C.J.S., Notaries, § 1 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 21-14-101. Appointment and commission.
- 21-14-102. Change of residence.
- 21-14-103. Change in personal information.
- 21-14-104. Power and authority generally.
- 21-14-105. Administration of oaths.
- 21-14-106. Acknowledgments and authentications.
- 21-14-107. Signature — Seal.

SECTION.

- 21-14-108. Expiration date of commission.
- 21-14-109. Performance of duties for corporation.
- 21-14-110. Admissibility of acknowledged instruments.
- 21-14-111. Unlawful act — Penalty.
- 21-14-112. Denial or revocation of notary public commission.
- 21-14-113. Notice of revocation — Appeal.

A.C.R.C. Notes. Due to the addition of Subchapter 2 of this chapter by Acts 1995, No. 200, the preexisting provisions of this chapter have been designated as Subchapter 1.

Effective Dates. Acts 1874, No. 17, § 2: effective on passage.

Acts 1891, No. 35, § 3: effective 60 days after passage.

Acts 1905, No. 269, § 2: effective on passage.

Acts 1983, No. 21, § 3: Feb. 3, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is unclear under present law whether the Secretary of State may transfer the commission of a notary public from one county to another upon the change of residence of notaries public; that such authority should immediately be granted the Secretary of State; and that this Act is immediately necessary to grant such authority. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 304, § 6: Mar. 2, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the fees currently prescribed by law to be charged by notaries for their services are outdated and are not suffi-

cient to compensate notaries public for their services; that the current laws relating to notaries public do not require applicants for a notary commission to post a bond to assure that they perform their duties as a notary in accordance with law; that this act is designed to increase fees for notary services and to require notaries to file a bond at the time of making application for a notary commission and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1274, § 8: Apr. 4, 2001. Emergency clause provided: "It is found and determined by the General Assembly that the notary public law needs to be updated and reformed immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

21-14-101. Appointment and commission.

(a)(1) The Secretary of State may appoint and commission individual persons as notaries public in this state.

(2) Notaries public may perform notarial acts in any part of the state for a term of ten (10) years.

(b) Every applicant for appointment and commission as a notary public shall complete an application to be filed with the Secretary of State stating:

(1) That he or she is:

(A) Either a:

(i) Bona fide citizen of the United States; or

(ii) Permanent resident alien who shall file with his or her application a recorded Declaration of Domicile;

(B) A legal resident of Arkansas or an adjoining state and employed in the State of Arkansas;

(C) Eighteen (18) years of age or older; and

(D) Able to read and write English;

(2) The address of his or her business or residence in this state; and

(3) That during the past ten (10) years, his or her commission as a notary public has not been revoked.

(c) The application shall be sent to the Secretary of State with a twenty-dollar (\$20.00) fee for the notary public commission.

(d) Every notary public shall file in the office of the recorder of deeds for the county in which the notary public resides or, in the case of a resident of an adjoining state, in the county in Arkansas in which employed, either:

(1) A surety bond executed by a surety insurer authorized to do business in Arkansas to the state for the faithful discharge of the notary public's duties, in the sum of seven thousand five hundred dollars (\$7,500), to be approved by the clerk of the circuit court of the county; or

(2) A surety contract guaranteeing the notary public's faithful discharge of his or her duties executed to the State of Arkansas for not more than an aggregate seven thousand five hundred dollars (\$7,500), issued by a general business corporation, validly organized and formed under the laws of this state pertaining to domestic corporations, and which:

(A) Has previously registered with the Insurance Commissioner on forms prescribed by the commissioner evidencing the corporation's purpose to issue only surety contracts for notaries public pursuant to the provisions of this section;

(B) Has previously deposited and thereafter maintains with the commissioner securities in the sum of not less than ten thousand dollars (\$10,000) executed to the State of Arkansas which are issued by a nonaffiliated corporate entity and are approved by the commissioner; and

(C) Is not otherwise transacting any insurance business in this state which requires compliance with the provisions of the Arkansas Insurance Code.

History. Acts 1874, No. 17, § 1, p. 61; C. & M. Dig., § 7969; Pope's Dig., § 10362; Acts 1981, No. 672, § 1; 1985, No. 966, § 1; A.S.A. 1947, § 12-1401; Acts 1989, No. 304, § 2; 2001, No. 1274, § 1.

A.C.R.C. Notes. For codification of the Arkansas Insurance Code, see the "meaning of 'this code'" note at § 23-60-101.

Amendments. The 2001 amendment redesignated former (b)(1)-(4) as present

(b)(1) and redesignated the remaining subsections accordingly; deleted (b)(3) and made related changes; substituted "seven thousand five hundred dollars (\$7,500)" for "four thousand dollars (\$4,000)" in (d)(1)-(2); substituted "commissioner" for "Insurance Commissioner" in (d)(2)(B); and made minor stylistic and gender neutral changes throughout.

CASE NOTES

ANALYSIS

Liability of notary.
Noncompliance.
Qualifications.

Liability of Notary.

A party who is damaged because of reliance upon truth of statement sworn to before notary is injured by the act of the party swearing falsely rather than by the negligence of the notary in certifying that the statement has been sworn. *Smith v. Maginnis*, 75 Ark. 472, 89 S.W. 91 (1905); *Coffin v. Bruten*, 78 Ark. 162, 95 S.W. 462 (1906).

Noncompliance.

Recorded mortgage properly acknowledged was enforceable even though notary who took the acknowledgment had not qualified himself as required by this section. *Forrest City Grocer Co. v. Catlin*, 193 Ark. 148, 97 S.W.2d 910 (1936).

Qualifications.

Notary's residence in county of his appointment is essential. *Lanier v. Norfleet*, 156 Ark. 216, 245 S.W. 498 (1922).

Cited: *Brown v. Anderson*, 210 Ark. 970, 198 S.W.2d 188 (1946).

21-14-102. Change of residence.

(a)(1) Upon receiving notification of a change of residency, the Secretary of State shall transfer a notary public's appointment and commission to the new county of residence in instances where a person appointed and commissioned a notary public under § 21-14-101 changes residence to a county within this state other than the county wherein the notary resided on the date of commission.

(2) Upon receiving notification of a change in place of employment, the Secretary of State shall transfer a notary public's appointment and commission to the new county of employment in the case of a resident of an adjoining state changing his or her place of employment to a county within this state other than the county wherein the notary was employed on the date of commission.

(b) The original bond shall also be filed in the new county of residence or county of employment.

History. Acts 1983, No. 21, § 1; 1985, No. 966, § 2; A.S.A. 1947, § 12-1401.1.

21-14-103. Change in personal information.

(a)(1) If any notary public has a change in his or her status in life which alters the information on record with the Secretary of State, he

or she shall be responsible for providing that change of information to the Secretary of State within thirty (30) calendar days of the change.

(2) If the change in status involves a court order, the notary public shall be responsible for providing the Secretary of State with a certified copy of the order within thirty (30) calendar days of the filing of the order with the clerk.

(3) If the notary public marries, a certified copy of the marriage certificate shall be delivered to the office of the Secretary of State.

(b) Immediately upon receipt of any change in a notary public's information, the Secretary of State shall send a copy to the office of the recorder of deeds for the county in which the notary public resides or, in the case of a resident of an adjoining state, in the county in Arkansas in which he or she is employed.

History. Rev. Stat., ch. 104, § 6; C. & M. Dig., § 7975; Pope's Dig., § 10368; A.S.A. 1947, § 12-1410; Acts 2001, No. 1274, § 2.

Amendments. The 2001 amendment rewrote this section.

21-14-104. Power and authority generally.

The power and authority of a notary public shall be coextensive with the state for:

- (1) The purpose of swearing witnesses;
- (2) Taking affidavits and depositions; and
- (3) Taking acknowledgments of deeds and other instruments in writing and authorized by law to be acknowledged.

History. Acts 1901, No. 82, § 1, p. 148; § 7970a; Pope's Dig., § 10363; A.S.A. 1905, No. 269, § 1, p. 687; C. & M. Dig., 1947, § 12-1405.

CASE NOTES

Removal from County.

Notary's removal from county of his appointment renders his acts in taking

affidavits null and void. *Lanier v. Norfleet*, 156 Ark. 216, 245 S.W. 498 (1922).

21-14-105. Administration of oaths.

Each notary public shall have power to administer oaths in all matters incident to or belonging to the exercise of his or her notarial office.

History. Rev. Stat., ch. 104, § 3; C. & M. Dig., § 7970; Pope's Dig., § 10363; A.S.A. 1947, § 12-1403.

21-14-106. Acknowledgments and authentications.

(a) A notary public may:

- (1) Take the proof or the acknowledgment of all instruments of writing relating to commerce and navigation;

(2) Receive and authenticate acknowledgments of deeds, letters of attorney, and other instruments of writing;

(3) Make declarations and protests; and

(4) Certify under his or her official seal the truth of all matters and things done by virtue of his or her office.

(b) A notary public may supervise the making of a photocopy of an original document and attest that the document is a copy if the document is neither:

(1) A vital record in this state, another state, a territory of the United States, or another country; or

(2) A public record if a copy can be made by the custodian of the public record.

History. Rev. Stat., ch. 104, § 4; C. & M. Dig., § 7973; Pope's Dig., § 10366; A.S.A. 1947, § 12-1404; Acts 2001, No. 1274, § 3.

Amendments. The 2001 amendment redesignated the former introductory language as present (a); added (b), and made gender neutral changes throughout.

CASE NOTES

Disqualification.

A notary public is not disqualified to take an acknowledgment to a mortgage by reason of the fact that he acted as agent

for the mortgagor in obtaining the loan of money which the mortgage was intended to secure. *Penn v. Garvin*, 56 Ark. 511, 20 S.W. 410 (1892).

21-14-107. Signature — Seal.

(a)(1) At the time of notarization, the notary public shall sign his or her official signature on every notary certificate.

(2) The official signature shall be the signature on file with the Secretary of State at the time of signing.

(b)(1) Under or near his or her official signature on every notary certificate, a notary public shall provide a seal of his or her office, which shall be either a rubber stamp seal or a seal embosser. The seal shall be clear and legible and capable of photographic reproduction.

(2) The seal should include:

(A) The notary public's name exactly as he or she writes his or her official signature;

(B) The name of the county where the notary public's bond is filed;

(C) The words "notary public" and "Arkansas"; and

(D) The date upon which the notary public's notary expires.

(c) A notary seal shall not include the Seal of the State of Arkansas or an outline of the state.

(d) The seal and certificate of the notary public commission are the exclusive property of the notary public and must be kept in the exclusive control of the notary public.

(e) The seal and certificate of commission shall not be surrendered to an employer upon termination of employment, regardless of whether or not the employer paid for the seal or for the commission.

History. Rev. Stat., ch. 104, § 7; C. & M. Dig., § 7976; Pope's Dig., § 10369; Acts 1981, No. 672, § 2; A.S.A. 1947, § 12-1402; Acts 2001, No. 1274, § 4.

Amendments. The 2001 amendment redesignated former (a) as present (a)(1) and made related changes; added (a)(2),

(b)(2)(D), and (c)-(e) and made related changes; and made gender neutral changes throughout.

Cross References. Seals of public officers to contain emblem of state, § 1-4-108.

CASE NOTES

Noncompliance.

The absence from a notary's seal of the emblems and devices required by this sec-

tion does not invalidate his certificate of the acknowledgment of a deed. *Sonfield v. Thompson*, 42 Ark. 46 (1883).

21-14-108. Expiration date of commission.

(a)(1) Every notary public shall attach to any certificate of acknowledgment or jurat to an affidavit that he or she may make a statement of the date on which his or her commission will expire.

(2) No acknowledgment or other act of a notary public shall be held invalid on account of the failure to comply with this section.

(b) No notary public shall perform any official act after the expiration of his or her commission as evidenced by his or her certificate.

(c) Thirty (30) calendar days prior to the expiration of a notary public's commission, he or she shall submit to the Secretary of State a new application along with the twenty-dollar (\$20.00) fee for the renewal of the commission.

(d) Every notary public shall file in the office of the recorder of deeds for the county in which the notary public resides or, if the person is a resident of an adjoining state, in the county in Arkansas in which employed, either:

(1) A surety bond executed by a surety insurer authorized to do business in Arkansas for the faithful discharge of the notary public's duties, in the sum of seven thousand five hundred dollars (\$7,500), to be approved by the clerk of the circuit court of the county; or

(2) A surety contract guaranteeing the notary public's faithful discharge of his or her duties executed to the State of Arkansas for not more than an aggregate seven thousand five hundred dollars (\$7,500), issued by a general business corporation, validly organized and formed under the laws of this state pertaining to domestic corporations, and which:

(A) Has previously registered with the Insurance Commissioner on forms prescribed by the commissioner evidencing the corporation's purpose to issue only surety contracts for notaries public pursuant to the provisions of this section;

(B) Has deposited and maintains with the commissioner securities in the sum of not less than ten thousand dollars (\$10,000) executed to the State of Arkansas which are issued by a nonaffiliated corporate entity and are approved by the commissioner; and

(C) Is not otherwise transacting any insurance business in this state which requires compliance with the provisions of the Arkansas Insurance Code.

History. Acts 1891, No. 35, §§ 1, 2, p. 57; C. & M. Dig., §§ 7971, 7972; Pope’s Dig., §§ 10364, 10365; A.S.A. 1947, §§ 12-1406, 12-1407; Acts 2001, No. 1274, § 5.

A.C.R.C. Notes. The Arkansas Insurance Code, referred to in this section, is codified as set out in the note following § 23-60-101.

Amendments. The 2001 amendment rewrote this section.

21-14-109. Performance of duties for corporation.

- (a) It shall be lawful for any notary public who is a stockholder, director, officer, or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by the corporation, or to administer an oath to any other stockholder, director, officer, employee, or agent of the corporation, or to protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes, and other negotiable instruments which may be owned or held for collection by the corporation.
- (b) It shall be unlawful for any notary public to take the acknowledgment of an instrument executed by or to a bank or other corporation of which he or she is a stockholder, director, officer, or employee where the notary public is a party to the instrument, either individually or as a representative of the corporation, or to protest any negotiable instrument owned or held for collection by the corporation, where the notary public is individually a party to the instrument.

History. Acts 1953, No. 331, § 1; A.S.A. 1947, § 12-1411.

21-14-110. Admissibility of acknowledged instruments.

All declarations and protests made and acknowledgments taken by a notary public and certified copies of the notary public’s records and official papers shall be received as evidence of the facts therein stated in all the courts of this state.

History. Rev. Stat., ch. 104, § 8; C. & M. Dig., § 7977; Pope’s Dig., § 10370; A.S.A. 1947, § 12-1409.

RESEARCH REFERENCES

Ark. L. Rev. Documentary Evidence — Arkansas, 15 Ark. L. Rev. 79.

CASE NOTES

Prima Facie Evidence.
The certificate of the notary that the

holder of a note had mailed notice to the endorser is prima facie evidence of the

facts stated. *Peters v. Hobbs*, 25 Ark. 67 (1867); *Fletcher v. Arkansas Nat'l Bank*, 62 Ark. 265, 35 S.W. 228 (1896).

21-14-111. Unlawful act — Penalty.

(a) It is unlawful for any notary public to witness any signature on any instrument unless the notary public either:

(1) Witnesses the signing of the instrument and personally knows the signer or is presented proof of the identity of the signer; or

(2) Recognizes the signature of the signer by virtue of familiarity with the signature.

(b) Any notary public violating this section shall be guilty of a Class A misdemeanor.

(c) For purposes of this section, “personally knows” means having an acquaintance, derived from association with the individual, which establishes the individual’s identity with at least a reasonable certainty.

History. Acts 1989, No. 304, § 3; 2001, No. 1274, § 6.

deleted (b)(2) and made related changes; and added (c).

Amendments. The 2001 amendment

CASE NOTES

Forged Signature.

Where bank sought to take advantage of its own wrongful conduct in notarizing and accepting wife’s signature as forged by her husband on a promissory note, its conduct was improper and unconscionable

and barred by the clean hands doctrine. *Merchants & Planters Bank & Trust Co. v. Massey*, 302 Ark. 421, 790 S.W.2d 889 (1990).

Cited: *Porter v. McCuen*, 310 Ark. 674, 839 S.W.2d 521 (1992).

21-14-112. Denial or revocation of notary public commission.

(a) The Secretary of State may deny the application of any person for appointment or reappointment or revoke the commission of any notary public during such notary public’s term of appointment if the notary public:

(1) Submits an application for commission and appointment that contains substantial and material misstatement or omission of fact;

(2) Is convicted of official misconduct under the provisions of § 21-14-111;

(3) Knowingly uses false or misleading advertising in which the notary public represents that the notary public has powers, duties, rights, or privileges that the notary public does not possess by law;

(4) Is found by a court of this state to have engaged in the unauthorized practice of law; or

(5) Is found by a court to have improperly notarized documents according to the law.

(b) The Secretary of State may investigate possible violations of this section upon a signed complaint from any person.

(c) After a notary public receives notice from the Secretary of State that the notary public’s commission has been revoked, unless such

revocation has been enjoined the notary public shall immediately send or have delivered to the Secretary of State the notary public’s journal of notarial acts, all other papers and copies relating to the notary public’s notarial acts, and the notary public’s official seal.

(d) A person whose notary public commission has been revoked pursuant to the provisions of this section may subsequently apply for commission and appointment as a notary public after three (3) years have elapsed from the date of such revocation.

History. Acts 1999, No. 1187, § 1.

21-14-113. Notice of revocation — Appeal.

- (a) If the Secretary of State revokes a notary public commission, he or she shall serve the notary public with written notice that explains the reason or reasons for the revocation.
- (b)(1) The notary public may appeal the revocation to the Pulaski County Circuit Court within thirty (30) days after service of the notice of revocation is perfected.
- (2) The notary public shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State’s Certificate of Revocation and the written notice of revocation.
- (c) The court may summarily order the Secretary of State to reinstate the notary public or take other action the court considers appropriate.
- (d) The court’s final decision may be appealed as in other civil proceedings.

History. Acts 1999, No. 1187, § 2.

SUBCHAPTER 2 — FACSIMILE SIGNATURES AND SEALS.

SECTION.
21-14-201. Definitions.
21-14-202. Use of facsimile signatures
and seals authorized —
Filing required.

SECTION.
21-14-203. Expiration and resignation.
21-14-204. Duties of notary public.
21-14-205. Force and effect.

Effective Dates. Acts 1995, No. 200, § 5: Feb. 9, 1995. Emergency clause provided: “Many commercial documents are required to include a notary certificate to comply with terms imposed by purchase orders, business contracts, construction standards, testing standards and other commercial practices. Where such documents are produced by computer and subscribed by an affiant in facsimile form, substantial time and expense is required for a notary public to manually sign, seal

and affix notary certificates as required by present law, which increases operating costs, makes Arkansas business less competitive and costs Arkansas jobs. Arkansas law presently permits authorized officers to sign and seal public securities and instruments of payment by facsimile signature and seal under similar circumstances, following a filing with the secretary of state (Ark. Code Ann. § 21-10-101 et seq.), but has no similar provision for notaries public on commercial documents.

Operating costs may be reduced and expensive business equipment may be more fully utilized by allowing notaries public to affix notary certificates bearing facsimile signatures and seals under appropriate circumstances. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 2001, No. 1274, § 8: Apr. 4, 2001. Emergency clause provided: "It is found and determined by the General Assembly that the notary public law needs to be

updated and reformed immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

21-14-201. Definitions.

As used in this subchapter:

(1) "Facsimile signature" means the reproduction by engraving, imprinting, stamping, or other means of a manual signature of a notary public;

(2) "Facsimile seal" means the reproduction by engraving, imprinting, stamping, or other means of the seal of office of a notary public, containing the information described in § 21-14-107(b)(2); and

(3)(A) "Commercial document" means any instrument, certificate, report, billing, affidavit, or other document which is required to bear a notary certificate by the terms of a purchase order, contract, bid specification, construction standard, testing standard, or other commercial standard, specification, or practice.

(B) The term "commercial document" shall not include any deed or other instrument in writing for the conveyance of any real estate or by which any real estate may be affected in law or equity.

History. Acts 1995, No. 200, § 1.

21-14-202. Use of facsimile signatures and seals authorized — Filing required.

Any notary public may affix a notary certificate bearing the notary public's facsimile signature and facsimile seal in lieu of the notary public's manual signature and rubber or embossed seal on a commercial document, after filing with the Secretary of State:

(1) The notary public's manual signature certified by the notary public under oath;

(2) A general description of the types of commercial documents to be notarized by facsimile signature and seal;

(3) The name and manual signature of any other person or persons signing the commercial documents by manual or facsimile signature; and

(4) The written consent of any other person or persons signing the commercial documents to the use of the notary public's facsimile signature and facsimile seal on the commercial documents.

History. Acts 1995, No. 200, § 1.

21-14-203. Expiration and resignation.

(a) Any filing by a notary public with the Secretary of State under the terms of this subchapter shall remain in effect until the earlier of:

(1) The date on which the notary public's commission in effect on the date of filing expires;

(2) The filing is cancelled by the notary public by subsequent written filing with the Secretary of State; or

(3) The filing is cancelled pursuant to § 21-14-113.

(b)(1) A notary public shall send a signed letter of resignation to the Secretary of State and shall return his or her certificate of notary public commission when the notary public:

(A) Wishes to resign his or her commission;

(B) Does not maintain legal residence or employment in this state during the entire term of appointment; or

(C) Is required to resign pursuant to a court order of this state or any other state.

(2) The resigning notary public shall destroy his or her official seal immediately upon resignation.

History. Acts 1995, No. 200, § 1; 2001, No. 1274, § 7. added "and resignation" in the section heading; and added (a)(3) and (b) and

Amendments. The 2001 amendment made related changes.

21-14-204. Duties of notary public.

A notary public shall have the same duties when affixing a notary certificate with the notary public's facsimile signature and facsimile seal on a commercial document as when signing a notary certificate with the notary public's manual signature and rubber or embossed seal, and nothing in this subchapter shall remove any duty or responsibility imposed on a notary public by law, except as specifically provided in this subchapter.

History. Acts 1995, No. 200, § 1.

21-14-205. Force and effect.

Notary certificates which are signed by facsimile signature and sealed by facsimile seal under the provisions of this subchapter shall have the same force and effect as notary certificates signed by manual signature and bearing a rubber or embossed seal for all purposes.

History. Acts 1995, No. 200, § 1.

CHAPTER 15

CRIMINAL BACKGROUND CHECKS

SECTION.

21-15-101. Definitions.

21-15-102. Positions involving direct contact with children and with mentally ill and developmentally disabled persons.

21-15-103. Deadline — Scope of check — Report — Notice — Discharge.

21-15-104. Waiver of exclusion or discharge requirement.

SECTION.

21-15-105. Confidentiality.

21-15-106. Rules and regulations — Records.

21-15-107. Identification Bureau and registries — Duties.

21-15-108. Exempted employees.

21-15-109. Immunity.

21-15-110. Notice to employer.

Effective Dates. Acts 1997, No. 1019, § 13: Oct. 1, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Arkansas children and their parents or guardians should be secure in the knowledge that persons employed by the State who have direct contact with children do not have criminal records and are not a potential threat to the safety of their children; and that an increasing number of incidents are occurring where persons employed by the State are abusing children entrusted into the care of the State; and that in some cases these incidents could have been avoided had the persons been subjected to a criminal records check. It is further found and determined that, in some instances, allegations of employee criminal misconduct involving children are not being investigated. Therefore, an emergency is declared to

exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on October 1, 1997."

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective [sic] on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

21-15-101. Definitions.

As used in this subchapter:

(1) "Applicant" means a person applying for employment with a state agency;

(2) "Central registry check" means a review of the databases of the Child Maltreatment Central Registry, the Adult Abuse Central Registry, and the Certified Nursing Assistant/Employment Clearance Registry maintained by the Office of Long-Term Care of the Division of Medical Services of the Department of Human Services pursuant to 42 C.F.R. § 483.156 and § 20-10-203;

(3) "Child" means a minor under the age of eighteen (18);

(4) "Designated position" means a position in which a person is employed by a state agency to provide care, supervision, treatment, or any other services to the elderly, to mentally ill or developmentally disabled persons, to individuals with mental illnesses, or to children who reside in any state-operated facility or a position in which the applicant or employee will have direct contact with a child;

(5) "Developmentally disabled person" means a person with a disability that is attributable to:

(A) Mental retardation, cerebral palsy, epilepsy, or autism;

(B) Any other condition of a person found to be closely related to mental retardation because it results in an impairment of general intellectual functioning or adaptive behavior similar to those of mentally retarded persons or requires treatment and services similar to those required for such persons; or

(C) Dyslexia resulting from a disability associated with mental retardation, cerebral palsy, epilepsy, or autism;

(6) "Direct contact" means the ability to interview, question, examine, interact with, talk with, or communicate with a child without being in the physical presence of a person other than the child;

(7) "Elderly" means persons age sixty-five (65) or older;

(8)(A) "Mentally ill persons" means those who suffer from a substantial impairment of emotional processes, or of the ability to exercise conscious control of their actions, or of the ability to perceive reality or to reason when the impairment is manifested in instances of extremely abnormal behavior or extremely faulty perceptions.

(B) "Mentally ill persons" does not include persons whose impairment is solely caused by epilepsy, continuous or noncontinuous periods of intoxication caused by substances such as alcohol or drugs, or dependence upon or addiction to any substance such as alcohol or drugs; and

(9)(A) "State agency" means any agency, authority, board, bureau, commission, council, department, office, or officer of the state receiving an appropriation by the General Assembly.

(B) "State agency" shall not include municipalities, townships, counties, school districts, and state-supported institutions of higher learning.

History. Acts 1997, No. 1019, § 1; 1999, No. 1409, § 9; 2001, No. 995, § 1.

Amendments. The 1999 amendment added (1), (3) and (5) and redesignated former (1), (2), and (3) as present (2), (4), and (6), respectively; and deleted "and" at the end of (4).

The 2001 amendment inserted (2), (5),

and (8), and redesignated the remaining subdivisions accordingly; in present (4), substituted "mentally ill or developmentally disabled persons" for "individuals with mental or physical disabilities", and deleted a comma following "facility"; and added subdivision designations in present (9).

21-15-102. Positions involving direct contact with children and with mentally ill and developmentally disabled persons.

(a)(1)(A) When a person applies for employment with a state agency in a designated position and if the state agency intends to make an offer of employment to the applicant, the applicant shall complete a criminal history check form and a central registry check form obtained from the state agency and shall submit the form to the state agency as part of the application process.

(B) If the state agency intends to make an offer of employment to the applicant, the state agency within five (5) days of the decision shall forward:

(i)(a) The criminal history check form to the Identification Bureau of the Department of Arkansas State Police and request the bureau to review the bureau's database of criminal history checks on state agency employees in designated positions.

(b) Within three (3) days of the receipt of a request to review the database, the bureau shall notify the state agency if the database contains any criminal history records on the applicant; and

(ii)(a) The central registry check form to the Child Maltreatment Central Registry, the Adult Abuse Central Registry, and the Certified Nursing Assistant/Employment Clearance Registry for a central registry check.

(b) The state agency shall pay any fee associated with the central registry check on behalf of the applicant.

(c) Within three (3) days of the receipt of a request for a central registry check, the central registry shall notify the state agency if the database contains any information naming the applicant as an offender or perpetrator of child or adult abuse.

(2) If no criminal history or central registry records regarding the applicant are found in the database, then the state agency may make an offer of temporary employment to the applicant while the bureau completes a criminal history check and the state agency determines whether the applicant is disqualified from employment under subsection (f) of this section.

(3)(A) If a criminal history record regarding the applicant is found in the bureau's database, then the applicant is temporarily disqualified from employment until the state agency determines whether the applicant is disqualified from employment under subsection (f) of this section.

(B) If the state agency determines that the applicant is not disqualified, then the state agency may continue to temporarily employ the applicant while the bureau completes a criminal history check.

(4) If an applicant has been named as an offender or perpetrator in a true, substantiated, or founded report from the Child Maltreatment Central Registry, the Adult Abuse Central Registry, or the Certified

Nursing Assistant/Employment Clearance Registry, the applicant shall be immediately disqualified.

(b)(1) Except as provided in subdivision (b)(2) of this section, the bureau shall conduct a state criminal history check and a national criminal history check on an applicant upon receiving a criminal history check request from a state agency.

(2) If the state agency can verify that the applicant has been employed by a state agency in a designated position within sixty (60) days before the application or has lived continuously in the State of Arkansas for the past five (5) years, the bureau shall conduct only a state criminal history check on the applicant.

(c)(1) Upon completion of a criminal history check on an applicant, the bureau shall issue a report to the state agency.

(2)(A) The state agency shall determine whether the applicant is disqualified from employment under subsection (f) of this section.

(B) If the state agency determines that an applicant is disqualified from employment, then the state agency shall deny employment to the applicant.

(d) When a national criminal history check is required under this section, the criminal history check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(e) Before making a temporary or permanent offer of employment, a state agency shall inform applicants that:

(1) Continued employment is contingent upon the results of a criminal history check and a central registry check; and

(2) The applicant has the right to obtain a copy of his or her:

(A) Criminal history report from the bureau; and

(B) Central registry report from the registries.

(f) No person shall be eligible for employment with a state agency in a designated position if that person has pleaded guilty or nolo contendere to, or been found guilty of, any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court:

(1) Capital murder, as prohibited in § 5-10-101;

(2) Murder in the first degree and second degree, as prohibited in §§ 5-10-102 and 5-10-103;

(3) Manslaughter, as prohibited in § 5-10-104;

(4) Negligent homicide, as prohibited in § 5-10-105;

(5) Kidnapping, as prohibited in § 5-11-102;

(6) False imprisonment in the first degree, as prohibited in § 5-11-103;

(7) Permanent detention or restraint, as prohibited in § 5-11-106;

(8) Robbery, as prohibited in § 5-12-102;

(9) Aggravated robbery, as prohibited in § 5-12-103;

(10) Battery in the first degree, as prohibited in § 5-13-201;

(11) Aggravated assault, as prohibited in § 5-13-204;

(12) Introduction of controlled substance into body of another person, as prohibited in § 5-13-210;

- (13) Terroristic threatening in the first degree, as prohibited in § 5-13-301;
- (14) Rape, as prohibited in § 5-14-103;
- (15) Sexual indecency with a child, as prohibited in § 5-14-110;
- (16) Sexual assault in the first degree, second degree, third degree, and fourth degree, as prohibited in §§ 5-14-124 — 5-14-127;
- (17) Incest, as prohibited in § 5-26-202;
- (18) Offenses against the family, as prohibited in §§ 5-26-303 — 5-26-306;
- (19) Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;
- (20) Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;
- (21) Permitting abuse of a child, as prohibited in § 5-27-221(a)(1) and (3);
- (22) Engaging children in sexually explicit conduct for use in visual or print medium, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or the use of a child or consent to the use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403;
- (23) Felony adult abuse, as prohibited in § 5-28-103;
- (24) Theft of property, as prohibited in § 5-36-103;
- (25) Theft by receiving, as prohibited in § 5-36-106;
- (26) Arson, as prohibited in § 5-38-301;
- (27) Burglary, as prohibited in § 5-39-201;
- (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-608, as prohibited in § 5-64-401;
- (29) Promotion of prostitution in the first degree, as prohibited in § 5-70-104;
- (30) Stalking, as prohibited in § 5-71-229;
- (31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection;
- (32) Computer child pornography, as prohibited in § 5-27-603; and
- (33) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

History. Acts 1997, No. 1019, § 2; 1999, No. 1409, § 10; 2001, No. 995, § 2; 2001, No. 1553, § 34; 2003, No. 1087, § 22; 2003, No. 1380, § 1; 2003, No. 1473, § 48.

Amendments. The 1999 amendment, in (a), designated in former introductory paragraph as (a)(1); redesignated former (a)(1) and (a)(2) as present (a)(2) and (a)(3), respectively; in (a)(1), substituted “designated position” for “position that

includes, as part of the job description, direct contact with a child” in the first sentence and substituted “in designated positions” for “having direct contact with a child” at the end of the second sentence.

The 2001 amendment by No. 995 rewrote this section.

The 2001 amendment by No. 1553 inserted “The state agency...of the applicant” in (a)(1), and made minor stylistic changes.

The 2003 amendment by No. 1087 added (f)(32) and (33).

The 2003 amendment by No. 1380 rewrote (f)(14); inserted present (f)(15) and (16); deleted former (f)(15)-(17) and red-

igned the remaining subdivisions accordingly; and made stylistic changes.

The 2003 amendment by No. 1473 inserted "check" in (e)(1); and rewrote (e)(2).

21-15-103. Deadline — Scope of check — Report — Notice — Discharge.

(a)(1)(A) State agencies shall ensure that all employees in designated positions will have applied for criminal history checks by October 1, 2000, and shall adopt a rule that prescribes how criminal background checks on incumbent employees will be phased in over the period of time prior to July 1, 2000.

(B) The rule shall require incumbent employees to apply for criminal history checks in conjunction with the employee's anniversary of employment or any time before that date.

(2) State agencies shall ensure that all employees in designated positions will have applied for central registry checks by October 1, 2002, and shall adopt a rule that prescribes how central registry checks on incumbent employees will be phased in over the period of time prior to July 1, 2002. The rule shall require incumbent employees to apply for central registry checks in conjunction with the employee's anniversary of employment or any time before that date.

(3) In accordance with subdivisions (a)(1) and (2) of this section, each employee of a state agency in a designated position shall complete a criminal history check form and a central registry check form obtained from the state agency and shall submit the form to the state agency. The state agency shall forward:

(A)(i) The criminal history check form to the Identification Bureau of the Department of Arkansas State Police.

(ii) The state agency shall pay any fee associated with the criminal history check on behalf of the employee; and

(B)(i) The central registry check to the Child Maltreatment Central Registry, the Adult Abuse Central Registry, and the Certified Nurses Assistants Central Registry to review the databases.

(ii) The state agency shall pay any fee associated with the central registry checks.

(b)(1) Except as provided in subdivision (b)(2) of this section, the bureau shall conduct a state criminal history check and a national criminal history check on an applicant upon receiving a criminal history check request from a state agency.

(2) If the state agency can verify that the applicant has been employed by a state agency in a designated position within sixty (60) days before the application or has lived continuously in the State of Arkansas for the past five (5) years, the bureau shall conduct only a state criminal history check on the applicant.

(c)(1) Upon completion of a criminal history check on an employee, the bureau shall issue a report to the state agency.

(2)(A) The state agency shall determine whether the employee is disqualified from employment under subsection (g) of this section.

(B) If the state agency determines that an employee is disqualified from employment, then the state agency shall discharge the employee.

(d) When a national criminal history check is required under this section, the criminal history check shall conform to the applicable federal standards and shall include the taking of fingerprints.

(e) If an applicant has been named as an offender or perpetrator in a true, substantiated, or founded report from the Child Maltreatment Central Registry, the Adult Abuse Central Registry, or the Certified Nursing Assistant/Employment Clearance Registry, the state agency shall discharge the employee.

(f) A state agency shall inform all employees in designated positions that:

(1) Continued employment is contingent upon the results of a criminal history check and a central registry check; and

(2) The employee has the right to obtain a copy of his or her:

(A) Criminal history report from the bureau; and

(B) Central registry report from the registries.

(g) A state agency shall discharge from employment in a designated position any person who has pleaded guilty or nolo contendere to, or been found guilty of, any of the following offenses by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court, but only after an opportunity for a hearing conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.:

(1) Capital murder, as prohibited in § 5-10-101;

(2) Murder in the first degree and second degree, as prohibited in §§ 5-10-102 and 5-10-103;

(3) Manslaughter, as prohibited in § 5-10-104;

(4) Negligent homicide, as prohibited in § 5-10-105;

(5) Kidnapping, as prohibited in § 5-11-102;

(6) False imprisonment in the first degree, as prohibited in § 5-11-103;

(7) Permanent detention or restraint, as prohibited in § 5-11-106;

(8) Robbery, as prohibited in § 5-12-102;

(9) Aggravated robbery, as prohibited in § 5-12-103;

(10) Battery in the first degree, as prohibited in § 5-13-201;

(11) Aggravated assault, as prohibited in § 5-13-204;

(12) Introduction of controlled substance into body of another person, as prohibited in § 5-13-210;

(13) Terroristic threatening in the first degree, as prohibited in § 5-13-301;

(14) Rape, as prohibited in § 5-14-103;

(15) Sexual indecency with a child, as prohibited in § 5-14-110;

(16) Sexual assault in the first degree, second degree, third degree, or fourth degree as prohibited in §§ 5-14-124 — 5-14-127;

- (17) Incest, as prohibited in § 5-26-202;
- (18) Offenses against the family, as prohibited in §§ 5-26-303 — 5-26-306;
- (19) Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;
- (20) Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;
- (21) Permitting abuse of a child, as prohibited in § 5-27-221(a)(1) and (3);
- (22) Engaging children in sexually explicit conduct for use in visual or print medium, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or the use of a child or consent to the use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in §§ 5-27-303, 5-27-304, 5-27-305, 5-27-402, and 5-27-403;
- (23) Felony adult abuse, as prohibited in § 5-28-103;
- (24) Theft of property, as prohibited in § 5-36-103;
- (25) Theft by receiving, as prohibited in § 5-36-106;
- (26) Arson, as prohibited in § 5-38-301;
- (27) Burglary, as prohibited in § 5-39-201;
- (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-608, as prohibited in § 5-64-401;
- (29) Promotion of prostitution in the first degree, as prohibited in § 5-70-104;
- (30) Stalking, as prohibited in § 5-71-229;
- (31) Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection;
- (32) Computer child pornography, as prohibited in § 5-27-603; and
- (33) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

History. Acts 1997, No. 1019, § 3; 1999, No. 1409, §§ 11-13; 2001, No. 995, § 3; 2003, No. 482, § 1; 2003, No. 1087, § 23; 2003, No. 1379, § 1; 2003, No. 1473, § 49.

Amendments. The 1999 amendment substituted “designated positions will” for “positions that include, as part of the job description, direct contact with a child” in (a)(1); substituted “designated position” for “position that includes, as part of the job description, direct contact with a child” in (a)(2) and (b)(2); in the introductory paragraph of (f), substituted “designated position” for “position that includes, as part of the job description, direct contact with a child or children” and inserted “federal”; and made stylistic changes.

The 2001 amendment inserted (a)(2), and redesignated former (a)(2) as (a)(3); added the subdivision designations in present (a)(3); in the introductory language of (a)(3), substituted “subdivisions (a)(1) and (2)” for “subdivision (a)(1)” and inserted “and a central registry check form”; added (a)(3)(B); added the subdivision designations in (c); in (c)(2)(A), substituted “(g)” for “(f)” and deleted “and” from the end; inserted (e) and redesignated the remaining subsections accordingly; added the subdivision designations in present (f); deleted comma following “child” in introductory language of (f); deleted “that” from beginning of (f)(2); added “and” to (f)(2)(A); added (f)(2)(B); substituted “abuse of a child” for “child abuse” in

(g)(22); and substituted “medium” for “media” in (g)(23).

The 2003 amendment by No. 482 substituted “in designated positions that” for “in positions that include, as part of the job description, direct contact with a child that” in the introductory language in (f).

The 2003 amendment by No. 1087 added (g)(32) and (33).

The 2003 amendment by No. 1379 rewrote (g)(14); inserted present (g)(15) and (16); deleted former (g)(15)-(17) and redesignated the remaining subdivisions accordingly; and made stylistic changes throughout (g).

The 2003 amendment by No. 1473 inserted “and a central registry check” in (f)(1); and rewrote (f)(2).

21-15-104. Waiver of exclusion or discharge requirement.

(a) The provisions of §§ 21-15-102(a)(4), 21-15-102(f), 21-15-103(e), 21-15-103(g), and 21-15-110(b) may be waived by the director of a state agency upon the request of:

- (1) A supervisor or other managerial employee in the state agency;
- (2) An affected applicant for employment; or
- (3) The person subject to discharge.

(b) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

- (1) The age at which the crime or act was committed;
- (2) The circumstances surrounding the crime or act;
- (3) The length of time since the crime or act;
- (4) Subsequent work history;
- (5) Employment references;
- (6) Character references; and

(7) Other evidence demonstrating that the applicant or employee does not pose a threat to the health or safety of children or other clients of the state agency.

(c) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following offenses may not be waived by the state agency:

- (1) Capital murder, as prohibited in § 5-10-101;
- (2) Murder in the first degree and second degree, as prohibited in §§ 5-10-102 and 5-10-103;
- (3) Kidnapping, as prohibited in § 5-11-102;
- (4) Rape, as prohibited in § 5-14-103;
- (5) Sexual assault in the first degree and second degree, as prohibited in §§ 5-14-124 and 5-14-125;
- (6) Sexual indecency with a child, as prohibited in § 5-14-110;
- (7) Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;
- (8) Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;
- (9) Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to the use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in §§ 5-27-303 — 5-27-305, 5-27-402, and 5-27-403;

- (10) Felony adult abuse, as prohibited in § 5-28-103;
- (11) Arson, as prohibited in § 5-38-301;
- (12) Computer child pornography, as prohibited in § 5-27-603; and
- (13) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

History. Acts 1997, No. 1019, § 4; 1999, No. 1409, § 14; 2001, No. 995, § 4; 2003, No. 1087, § 24; 2003, No. 1377, § 1.

Amendments. The 1999 amendment added “or other clients of the state agency” at the end of (b)(7); added (c); and made stylistic changes.

The 2001 amendment substituted “21-15-102(a)(4), 21-15-103(f), 21-15-103(e), 21-15-103(g), and 21-15-110(b)” for “21-15-

102(f) and 21-15-103(f)” in the introductory language of (a); and inserted “or act” in (b)(1), (2), and (3) in (b).

The 2003 amendment by No. 1087 added (c)(12) and (13).

The 2003 amendment by No. 1377 rewrote (c)(4) and (5); substituted “indecency with a child” for “solicitation of a child” in (c)(6); and made stylistic changes.

21-15-105. Confidentiality.

(a) Any information received by a state agency from the Identification Bureau of the Department of Arkansas State Police or from a central registry check pursuant to this subchapter shall not be available for examination except by the affected applicant for employment or his or her authorized representative, and no record, file, or document shall be removed from the custody of the Department of Arkansas State Police.

(b) Any information made available to the affected applicant for employment or the person who is subject to discharge shall be information pertaining to that applicant only.

(c) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than a background check.

History. Acts 1997, No. 1019, § 5; 2001, No. 995, § 5.

Amendments. The 2001 amendment,

in (a), inserted “or from a central registry check”, and inserted “or her.”

21-15-106. Rules and regulations — Records.

(a) All state agencies with a designated position shall adopt the necessary rules and regulations to fully implement the provisions of this subchapter.

(b) Each state agency shall maintain on file, subject to inspection by the Arkansas Crime Information Center, the Identification Bureau of the Department of Arkansas State Police, or the Child Maltreatment Central Registry, the Adult Abuse Central Registry, or the Certified Nursing Assistant/Employment Clearance Registry evidence that criminal history central registry checks required by this subchapter have been initiated on all applicants and employees.

History. Acts 1997, No. 1019, § 6; 1999, No. 1409, § 15; 2001, No. 995, § 6.

Amendments. The 1999 amendment substituted “designated position” for “po-

sition that includes, as part of the job description, direct contact with a child" in (a).

The 2001 amendment, in (b), inserted the comma following "Center," deleted "or" following "Center," and inserted "or the

Child Maltreatment Central Registry, the Adult Abuse Central Registry, or the Certified Nursing Assistant/Employment Clearance Registry" and "central registry."

21-15-107. Identification Bureau and registries — Duties.

(a)(1) After receipt of a request for a criminal history check, the Identification Bureau of the Department of Arkansas State Police shall make reasonable efforts to respond to requests for state criminal history checks within twenty (20) calendar days and to respond to requests for national criminal history checks within ten (10) calendar days after the receipt of a national criminal history check from the Federal Bureau of Investigation.

(2) After receipt of a request for a central registry check, the registry shall make reasonable efforts to respond to requests within twenty (20) calendar days.

(b)(1) Upon completion of a criminal history check, the Identification Bureau of the Department of Arkansas State Police shall forward all information obtained concerning the applicant or employee to the Arkansas Crime Information Center.

(2) Upon completion of a central registry check, the registry shall forward all information obtained concerning the applicant or employee to the requesting state agency.

(c) The Identification Bureau of the Department of Arkansas State Police shall maintain a database of the results of criminal history checks on each applicant for employment with and each employee of a state agency in a designated position.

(d)(1) The Identification Bureau of the Department of Arkansas State Police shall develop a form to be used for criminal history checks conducted under this subchapter. The form shall require the notarized signature of the person who is the subject of the check.

(2) The Child Maltreatment Central Registry, the Adult Abuse Central Registry, and the Certified Nursing Assistant/Employment Clearance Registry shall work together to develop a form to be used for central registry checks conducted under this subchapter. The form shall require the notarized signature of the person who is the subject of the check.

History. Acts 1997, No. 1019, § 7; 2001, No. 995, § 7; 2003, No. 482, § 2.

Amendments. The 2001 amendment substituted "Identification Bureau of the Department of Arkansas State Police the Child Maltreatment Central Registry, the Adult Abuse Central Registry, and the Certified Nursing Assistant/Employment

Clearance Registry" for "bureau" in the section heading; and added (a)(2), (b)(2) and (d)(2).

The 2003 amendment substituted "in a designated position" for "in a position that includes, as part of the job description, direct contact with a child or children" in (c).

21-15-108. Exempted employees.

Any person who submits evidence of having maintained employment in the State of Arkansas for the past twelve (12) months and of successfully completing a criminal history check within the last twelve (12) months or in accordance with that person's professional license shall not be required to apply for a criminal history check under this subchapter.

History. Acts 1997, No. 1019, § 8.

21-15-109. Immunity.

Individuals and state agencies are immune from suit or liability for damages for acts or omissions, other than malicious acts or omissions, occurring in the performance of duties imposed by this subchapter.

History. Acts 1997, No. 1019, § 9.

21-15-110. Notice to employer.

(a) If a state employee is determined to be an offender or perpetrator in a true, substantiated, or founded report of child maltreatment or adult abuse and the state employee is employed in a designated position, the investigating agency shall immediately notify the employer of that state employee.

(b) The employer shall immediately discharge the employee.

History. Acts 2001, No. 995, § 8.

TITLE 22

PUBLIC PROPERTY

CHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS BUILDING AUTHORITY.
3. PUBLIC BUILDINGS AND OTHER FACILITIES.
4. PARKS AND RECREATION AREAS.
5. STATE LANDS GENERALLY.
6. SALE OR OTHER DISPOSITION OF STATE LANDS.
7. FEDERAL PROPERTY IN ARKANSAS.
8. MOTOR VEHICLES.
9. PUBLIC WORKS.

CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. ADVERSE POSSESSION.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — ADVERSE POSSESSION

SECTION.

- 22-1-201. Roads and parks.
22-1-202. Municipal waterworks lands.
22-1-203. Public school system property.
22-1-204. Realty owned by cities, towns,

SECTION.

- school districts, counties,
or state.
22-1-205. Property of drainage districts.
22-1-206. Property of levee districts.

Preambles. Acts 1965, No. 16, contained a preamble which read: "Whereas, properties of municipally owned waterworks systems in this state are acquired and are maintained at great public expense; and

"Whereas, retention of title to said properties is necessary for the furnishing of water and for preventing the pollution thereof; and

"Whereas, it shall be the public policy of this state that no person acquire title to such properties except by the purchase thereof;

"Now therefore..."

Effective Dates. Acts 1923, No. 666,

§ 8: effective on passage. Emergency declared. Approved Mar. 23, 1923.

Acts 2001, No. 1312, § 2: Apr. 5, 2001. Emergency clause provided: "It is found and determined by the General Assembly that the properties and easements of drainage districts are acquired and maintained at great expense to the farmers and landowners within the districts; that these properties and servitudes are subject to extended periods of time where no person observes the activities which are actually taking place on these lands and easements; that retention of title to these properties are necessary for drainage and flood control management on lands within

the districts; and that it shall be the public policy of this state that no person acquire title to drainage district properties by adverse possession and this policy should have immediate force and effect. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become ef-

fective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

ALR. Private improvement of land dedicated but not used as street: Estoppel as to public rights. 36 ALR 4th 625.

Am. Jur. 3 Am. Jur. 2d, Adv. Poss., § 269 et seq.

Ark. L. Rev. Exemptions Under the

Statute of Limitations for Adverse Possession, 6 Ark. L. Rev. 37.

C.J.S. 2 C.J.S., Adv. Poss., § 12 et seq.

UALR L.J. Arkansas Law Survey, Freeman, Property, 8 UALR L.J. 197.

22-1-201. Roads and parks.

(a) No title or right of possession to any public thoroughfare, road, highway, or public park, or any portion thereof, shall or can be acquired by adverse possession or adverse occupancy, and the right of the public or of the proper authorities of any county to open or have opened any such public thoroughfare, road, highway, park, or parts thereof shall not be defeated in any action or proceeding by reason of adverse possession or adverse occupancy of any such public thoroughfare, road, highway, or park, or any portion thereof where adverse possession or occupancy commenced after the passage of this section.

(b) Any thoroughfare, road, or highway that may be platted by any landowner and dedicated to the public as a public thoroughfare, road, or highway where the plat shows or the bill of assurance states the width of the road or highway or any park dedicated by any landowner to the public as a public park for the use and benefit of the public shall not be acquired by adverse possession or adverse occupancy of any such land so dedicated to the public, or any portion thereof, where the adverse possession or occupancy commenced after the passage of this section.

History. Acts 1923, No. 666, §§ 1, 2; Pope's Dig., § 8958; A.S.A. 1947, §§ 37-109, 37-110.

Publisher's Notes. With reference to the term "passage of this section," Acts 1923, No. 666, § 8, declared an emergency and provided the act would be effective from and after its passage. The act was signed by the Governor on March 23, 1923.

Cross References. Designation as

county roads of direct routes to county courthouse, § 27-66-204.

Designation of land as county road upon being deeded to county as public thoroughfare, § 27-66-208.

Designation of street as public road upon dedication, § 27-66-207.

Streets, alleys, or public parks, no right or title to acquired by adverse possession, § 14-301-113.

CASE NOTES

ANALYSIS

Construction.

Purpose.

Abandonment of road.

Adverse possession.

Evidence.

Possession prior to enactment of section.

Construction.

This section should be strictly construed. *Raney v. Gunn*, 221 Ark. 10, 253 S.W.2d 559 (1952).

This section and §§ 27-66-204 and 27-66-205 must be interpreted together as parts of the same act. In that context, § 27-66-205 obviously means that, if a road serves as a mail route, it is designated as a public road and cannot be acquired from the county by adverse possession while § 27-66-204 means that, if a road is the most direct route to the county courthouse for ten or more families, has been graded, and has been used by the public for two years or more, it is classified as a public road and cannot be acquired by adverse possession. *Neyland v. Hunter*, 282 Ark. 323, 668 S.W.2d 530 (1984).

Purpose.

The purpose of Acts 1923, No. 666, clearly manifested by the language of the section, is to protect rural roads from hostile claims where adverse possession or occupancy began after the passage of the act. *Neyland v. Hunter*, 282 Ark. 323, 668 S.W.2d 530 (1984).

Abandonment of Road.

Where public ceased to use road following erection of gates across the road by landowner public lost title to road by virtue of nonuse or abandonment. *Raney v. Gunn*, 221 Ark. 10, 253 S.W.2d 559 (1952).

Where a road was not used by the public for ten or eleven years when a gate was

put across it, the public abandoned any prescriptive rights it had acquired in the road. *Munn v. Rateliff*, 247 Ark. 609, 446 S.W.2d 664 (1969).

Adverse Possession.

When the first lot was sold in reference to a subdivision plat recorded and dedicated in 1917, the streets platted became irrevocably dedicated and plaintiffs were prohibited from adversely possessing a street provided for by the plat, but never opened, by §§ 14-301-113 and 22-1-201, which prohibit adverse possession of public property and which were enacted before plaintiffs purchased their lots. *Mathis v. Brashear*, 34 Ark. App. 194, 807 S.W.2d 666 (1991).

Evidence.

In suit to prevent closing of road, evidence held sufficient to withstand demurrer. *Brock v. Bates*, 227 Ark. 173, 297 S.W.2d 938 (1957).

Possession Prior to Enactment of Section.

Continued adverse possession starting five years before enactment of this section held to have ripened into title. *Morgan v. Hill*, 224 Ark. 39, 272 S.W.2d 67 (1954).

Plea of limitations based on payment of taxes on tract of land which had been dedicated to town as public park was not good against claim of town where there was no claim that adverse possession started prior to the enactment of this section. *Mountain View v. Lackey*, 225 Ark. 1, 278 S.W.2d 653 (1955).

Cited: *Bollinger v. Arkansas State Hwy. Comm'n*, 229 Ark. 53, 315 S.W.2d 889 (1958); *Arkansas State Hwy. Comm'n v. Cook*, 233 Ark. 534, 345 S.W.2d 632 (1961); *Dowling v. Erickson*, 278 Ark. 142, 644 S.W.2d 264 (1983).

22-1-202. Municipal waterworks lands.

Regardless of the beginning date thereof, no adverse possession or adverse use of lands or easements owned by a municipality for municipal waterworks purposes shall or can ripen into title or permanent right. This section shall have no application to any possession or use which ripened into title or permanent right prior to the enactment of this section.

History. Acts 1965, No. 16, § 1; A.S.A. 1947, § 37-111.

Publisher's Notes. In reference to the term "enactment of this section," Acts

1965, No. 16, was signed by the Governor on February 1, 1965, and took effect on June 10, 1965.

22-1-203. Public school system property.

(a) As used in this section, "public school system" means any school system, district, college, or university in the State of Arkansas which is supported wholly or in part by tax dollars, whether federal, state, or local.

(b) No title or right of possession to any public school system property, or any portion thereof, shall or can be acquired by adverse possession or adverse occupancy thereof. The right of the public school system or of the proper school authorities of any public school system shall not be defeated in any action or proceeding by reason of adverse possession or adverse occupancy of any public school system property, or any portion thereof, where the parties claiming such adverse possession commence legal action after January 1, 1983. This section is to serve as legal notice to such parties that claims to adverse possession of public school properties commenced after January 1, 1983, shall be unwarranted and ineffective, and those claims shall be dismissed by the appropriate court.

History. Acts 1981, No. 209, §§ 1, 2; A.S.A. 1947, §§ 37-112, 37-113.

CASE NOTES

ANALYSIS

In general.
Applicability.

In General.

This section and § 22-1-204 bar claims or defenses of adverse possession against school districts when the right to adverse possession has not yet vested. *Lovell v. Magnet Cove Sch. Dist. No. 8*, 301 Ark. 94, 782 S.W.2d 41 (1990).

Applicability.

It was not the intention of the legislature, by the last sentence in subsection (b), to extend claims of adverse possession which had not vested at the time this section became effective. *Lovell v. Magnet Cove Sch. Dist. No. 8*, 301 Ark. 94, 782 S.W.2d 41 (1990).

22-1-204. Realty owned by cities, towns, school districts, counties, or state.

No title or right of possession to realty by an incorporated town, city of the second class, city of the first class, school district, county, or the state may be defeated in any action or proceeding because of adverse possession.

History. Acts 1981, No. 354, § 1; A.S.A. 1947, § 37-114.

RESEARCH REFERENCES

Ark. L. Rev. Color of Title and Payment of Taxes: The New Requirements Under Arkansas Adverse Possession Law, 50 Ark. L. Rev. 489.

CASE NOTES**In General.**

Section 22-1-203 and this section bar claims or defenses of adverse possession against school districts when the right to

adverse possession has not yet vested. Lovell v. Magnet Cove Sch. Dist. No. 8, 301 Ark. 94, 782 S.W.2d 41 (1990).

22-1-205. Property of drainage districts.

(a) As used in this section, a “drainage district” means a:

(1) Drainage improvement district formed by an act of the General Assembly;

(2) Drainage improvement district formed and operated under § 14-120-101 et seq.; or

(3) Drainage improvement district formed and operated under § 14-121-101 et seq.

(b)(1) No title or right of possession to property of a drainage district, or any portion thereof, shall be acquired by adverse possession or adverse occupancy.

(2) No easement or right of way of a drainage district for flowage, storage rights, and any other servitude upon, over, and across any lands, or any portion thereof, shall be acquired by adverse possession or adverse occupancy.

(c) The real property rights of a drainage district shall not be defeated in any cause of action or proceeding by reason of adverse possession or adverse occupancy of district property, or any portion thereof, where the parties claiming the adverse possession commence legal action after April 5, 2001.

History. Acts 2001, No. 1312, § 1.

22-1-206. Property of levee districts.

(a) As used in this section, a “levee district” means a:

(1) Levee district formed by Act 97 of 1911 and any other levee district formed by an act of the General Assembly;

(2) Watershed improvement district formed under the Arkansas Irrigation, Drainage, and Watershed Improvement District Act of 1949, § 14-117-201 et seq.;

(3) Levee district or levee and drainage district formed under § 14-120-101 et seq.; and

(4) Levee improvement district formed under § 14-123-201 et seq.

(b)(1) No title or right of possession to property of a levee district or any portion of a district’s property shall be acquired by adverse possession or adverse occupancy.

(2) No easement or right of way of a levee district for flowage, storage rights, and any other servitude upon, over, and across any lands or any portion of lands shall be acquired by adverse possession or adverse occupancy.

(c) The real property rights of a levee district shall not be defeated in any cause of action or proceeding by reason of adverse possession or adverse occupancy of a district's property or any portion of a district's property, where the parties claiming the adverse possession commence legal action after July 16, 2003.

History. Acts 2003, No. 861, § 1.

CHAPTER 2

ARKANSAS BUILDING AUTHORITY

SECTION.

- 22-2-101. Title.
- 22-2-102. Definitions.
- 22-2-103. Applicability — Construction with other laws.
- 22-2-104. Creation.
- 22-2-105. Director.
- 22-2-106. Arkansas Building Authority Council.
- 22-2-107. Creation of sections.
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- 22-2-109. Acquisition of additional sites.
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SECTION.

- two — Designated funds.
- 22-2-113. Schedule of supervision — Type three — All other cases.
- 22-2-114. Leasing responsibilities.
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- 22-2-116. Maintenance responsibilities generally.
- 22-2-117. Maintenance responsibilities — Capitol Zoning District.
- 22-2-118. Plans, specifications, and estimates of costs.
- 22-2-119. Fiscal management — Fund created.
- 22-2-120. Exemption from statutes concerning Capitol Zoning District.
- 22-2-121. Real estate compilation.

A.C.R.C. Notes. Acts 2003, No. 250, §§ 1-8, provided: "SECTION 1. Legislative intent and purpose.

"(a) The General Assembly recognizes that confusion exists in the public's perception regarding the purpose of the Arkansas State Building Services due to the inconsistency between the name of the agency and its established purposes.

"(b) The purpose of this act is to:

"(1) Provide the agency with a name that more accurately describes its role as an agency, that is intended to fulfill the legislatively established purposes of leasing, property management, design review, and contract oversight of capital improvements; and

"(2) Provide its supervisory board with a

name consistent with the agency's name change.

"SECTION 2. The Arkansas State Building Services, as established in Arkansas Code § 22-2-101, shall be known as the Arkansas Building Authority.

"SECTION 3. The State Building Services Council, as established in Arkansas Code § 22-2-106, shall be known as the Arkansas Building Authority Council.

"SECTION 4. The Arkansas State Building Services Maintenance Fund, as established in Arkansas Code § 19-5-1406, shall be known as the Arkansas Building Authority Maintenance Fund.

"SECTION 5. The State Building Services Fund, as established in Arkansas Code § 22-2-119, shall be known as the Arkansas Building Authority Fund.

"SECTION 6. The State Building Services Account of the General Improvement Fund Account, as established in Arkansas Code § 19-5-308, shall be known as the Arkansas Building Authority Account of the General Improvement Fund Account.

"SECTION 7. The State Building Services Real Estate Fund, as established in Arkansas Code § 19-5-1206, shall be known as the Arkansas Building Authority Real Estate Fund.

"SECTION 8. The Arkansas Code Revision Commission shall make all appropriate name changes in the Arkansas Code to implement this act."

Cross References. Exemption of realty owned by state from adverse possession, § 22-1-204.

Publisher's Notes. Acts 1977, No. 820, § 15, provided in part that to the extent that there is a conflict between the provisions of that act and this chapter the provisions of that act shall govern.

Effective Dates. Acts 1975, No. 716, § 17: July 1, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need for a State Building Services so as to coordinate the orderly physical development and operation of capital improvements of state agencies; that there is a pressing necessity of establishing minimum design, construction, maintenance, and leasing standards and criteria; and that there is a great need for the State of Arkansas to insure that moneys expended for capital improvement, leasing of space, and operation of state buildings are most efficiently, effectively and prudently utilized. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, welfare and safety shall be in full force and effect from and after July 1, 1975."

Acts 1983, No. 734, § 3: Mar. 23, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws relating to the authority and responsibility of the State Building Services and the State Building Services Council are not clear in certain areas, that this act is designed to clarify such authority and responsibility, and to invest the State Building Services and the State Building Services Council with broad authority concerning the alterations and repairs of existing public build-

ings, and should be given effect immediately. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 12, § 6: Feb. 1, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that one or more Arkansas State Retirement Systems own lands, buildings and facilities as a result of investment of assets of the systems; that to protect the interests of the systems, it is essential that they be permitted to operate and maintain such properties and that this act is immediately necessary to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 555, § 17: Mar. 12, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the state needs to assure that the system is able to provide the best possible benefits, including safe, adequate, and affordable facilities, for the system's members and that several changes in, and clarification of,

existing laws are immediately necessary in order for the system to continue to efficiently, effectively and timely administer the member's retirement benefits. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the

Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

22-2-101. Title.

This chapter may be referred to and cited as the "Arkansas Building Authority Act".

History. Acts 1975, No. 716, § 1;
A.S.A. 1947, § 5-1018.

22-2-102. Definitions.

As used in this chapter:

(1)(A) "Capital improvement" means all lands, buildings, structures, utilities, on-site and off-site improvements, other appertaining improvements, existing or future, and all construction, repairs, alterations, demolitions, and renovations thereof which are undertaken, owned, operated, or otherwise managed by a state agency.

(B) Except that "capital improvement" shall not include construction and reconstruction of roads and bridges in the state highway system by the State Highway Commission, nor shall the term "capital improvement" include any building, facility, plant, structure, or other improvement constructed by or in behalf of the Arkansas State Highway and Transportation Department or the State Highway Commission, nor shall the term "capital improvement" include any lands, buildings, or other structures or facilities now owned or hereafter acquired by an Arkansas state retirement system as an investment or as a result of the investment of assets of the system;

(2) "Council" means the Arkansas Building Authority Council established within the Arkansas Building Authority as created by this chapter;

(3) "Director" means the Director of the Arkansas Building Authority as created by this chapter;

(4) "Minimum standards and criteria" and other like phrases mean those standards and criteria relating to construction, design, maintenance, and leasing of state agencies' capital improvements as adopted by the council after appropriate public hearings and notice to the public and interested persons and organizations; and

(5) "State agency" means any board or commission, agency, department, institution of higher learning, including colleges, universities, and vocational-technical schools, or other state institutions. However, "state agency" shall not include any county, municipality, school dis-

trict, subdivision, or unit thereof of the State of Arkansas, nor shall the term "state agency" mean or include the Arkansas State Highway and Transportation Department or the State Highway Commission.

History. Acts 1975, No. 716, § 2; A.S.A. 1947, § 5-1019; Acts 1991, No. 12, § 1; 2003, No. 364, § 8.

redesignated former (1) as present (1)(A) and (1)(B) and made minor stylistic changes; and inserted "demolitions" in (1)(A).

Amendments. The 2003 amendment

22-2-103. Applicability — Construction with other laws.

(a) The provisions of this chapter shall not apply to the construction and reconstruction of roads and bridges in the state highway system by the State Highway Commission. Except as specifically provided in Title 24, neither the provisions of this chapter nor the provisions of any other chapter of the Code shall apply to any lands, buildings, or other structures or facilities now owned or hereafter acquired by the Arkansas Teacher Retirement System, as defined in the Arkansas Teacher Retirement System Affordable Housing Investment Act, § 24-7-1401 et seq., as an investment or as a result of the investment of assets of the system or pursuant to the Arkansas Teacher Retirement System Affordable Housing Investment Act, § 24-7-1401 et seq.

(b) The provisions of this chapter shall not be construed to affect any bonds issued by state agencies or any covenants or obligations entered into in connection with such bonds or any revenues pledged or used in the security or payment of such bonds, or the production, handling, deposit, or application of such revenues, including bonds issued by the Arkansas Justice Building Commission, pursuant to § 22-3-901 et seq., by the Arkansas State Department of Health Building Commission, pursuant to Acts 1965, No. 469, by the Department of Parks and Tourism or the agency performing the functions thereof, pursuant to § 22-4-301 et seq., or by the Board of Developmental Disabilities Services or the agency performing the functions thereof, pursuant to § 20-48-411 and § 20-48-501 et seq.

(c) The provisions of this chapter shall not apply in any manner so as to affect, supersede, or in any other way alter the powers, duties, and responsibilities of the Joint Interim Committee on Legislative Facilities as created by §§ 10-3-1101 — 10-3-1104 and 10-3-1106 — 10-3-1110, and the provisions of §§ 10-3-1101 — 10-3-1104 and 10-3-1106 — 10-3-1110 shall not be repealed by this chapter.

(d)(1) However, it is the intent of the General Assembly that the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., be applicable to all provisions and implementations of this chapter insofar as the provisions and implementation of this chapter are not in direct conflict with that law.

(2) It is the further intent that all procedures for contract bidding now or hereafter established by law or regulation applicable to capital improvements, as defined by this chapter, of state agencies shall be in full force and effect as to the implementation of the provisions of this chapter.

History. Acts 1975, No. 716, §§ 14, 16; A.S.A. 1947, §§ 5-1030, 5-1030n; Acts 1991, No. 12, § 2; 1999, No. 555, § 10.

Publisher's Notes. Acts 1993, No. 235, § 1 provided: "The Justice Building Commission created by Arkansas Code 22-3-904 is hereby abolished and all of its powers, duties, functions, records, personnel, property, unexpended balances of ap-

propriations, allocations, or other funds are hereby transferred to the Arkansas State Building Services created by Arkansas Code 22-2-104."

Acts 1965, No. 469, referred to in subsection (b), appears in A.S.A. T. 13, App. 14 and is codified, in part, in § 20-7-123.

Amendments. The 1999 amendment rewrote (a).

22-2-104. Creation.

There is created a public agency of the State of Arkansas to be known as the Arkansas State Building Authority. The authority shall carry out the duties and responsibilities set out in § 22-2-108 under the policies, guidelines, standards, and procedures established by the Arkansas Building Authority Council as created by § 22-2-106.

History. Acts 1975, No. 716, § 3; A.S.A. 1947, § 5-1020.

Publisher's Notes. Acts 1993, No. 235, § 1, provided: "The Justice Building Commission created by Arkansas Code 22-3-904 is hereby abolished and all of its

powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds are hereby transferred to the Arkansas State Building Services created by Arkansas Code 22-2-104."

CASE NOTES

Cited: Wells v. Clinton, 282 Ark. 20, 666 S.W.2d 684 (1984).

22-2-105. Director.

(a) The Arkansas Building Authority shall be administered by a director, who shall be appointed by and serve at the pleasure of the Governor and shall be confirmed by the Senate.

(b) The director shall have experience in property development and management.

(c) The director may hire sufficient staff as authorized by legislation to perform the duties of the authority. Personnel employed by the director shall be compensated according to the Uniform Classification and Compensation Act, § 21-5-201 et seq., for similar duties and responsibilities.

(d) The director shall be responsible for administering the rules, regulations, and policies of the Arkansas Building Authority Council pursuant to the provisions of this chapter.

(e) The director shall be the disbursing agent for the authority and shall pay any and all accounts upon prior approval of the council. The disbursing agent shall furnish and keep in effect a bond to the state with a corporate surety thereon which, together with any other bonds furnished by him or her, shall total in final sum not less than fifty thousand dollars (\$50,000) and is conditioned that he or she will faithfully perform his or her duties and properly handle all funds received and disbursed by him or her and account for those funds; the

bond so furnished shall be filed in the office of the Auditor of State. The premium on the bond shall be a proper charge against funds of the authority.

History. Acts 1975, No. 716, § 4; A.S.A. 1947, § 5-1021.

A.C.R.C. Notes. The operation of subsection (e) of this section was suspended by adoption of a self-insured fidelity bond program for public officers, officials and

employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The subsection may again become effective upon cessation of coverage under that program. See § 21-2-703.

22-2-106. Arkansas Building Authority Council.

(a) There is created an Arkansas Building Authority Council, hereinafter referred to as the "council".

(b) The council shall have eleven (11) members as follows:

(1)(A) Six (6) members shall be appointed by the Governor and confirmed by the Senate, one (1) of whom shall be from each congressional district and two (2) of whom shall be representative of the state at large;

(B) One (1) member shall be designated by the Speaker of the House of Representatives and one (1) member shall be designated by the President Pro Tempore of the Senate, but no member so designated by the Speaker of the House of Representatives or the President Pro Tempore of the Senate shall be a member of the General Assembly;

(C) All appointees or designees shall serve three-year staggered terms, and all appointees or designees may be subject to reappointment or redesignation; and

(D) The members of the council appointed by the Governor and designated by the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall be reflective of the economic, geographic, and social characteristics of the state.

(2) The Secretary of State or a designee shall be a full voting member of the council.

(3)(A) From among its members, the House of Representatives shall select one (1) member who shall be a nonvoting ex officio member of the council, and from among its members, the Senate shall select one (1) member who shall be a nonvoting ex officio member of the council.

(B) Such ex officio members shall serve two-year terms.

(c) The Governor shall designate one (1) of the members of the council as chair, except that no ex officio member shall be so designated.

(d) Members of the council shall receive no pay for their services, but those members who are not government officials may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1975, No. 716, § 3; A.S.A. 1947, § 5-1020; Acts 1997, No. 250, § 214; 1999, No. 1173, § 1.

Publisher's Notes. The terms of the members of the Arkansas Building Au-

thority Council are arranged so that, in any period of three years, three terms expire in two of the years and two terms expire in the remaining year.

Amendments. The 1999 amendment

inserted "or a designee" in (b)(2); and made stylistic changes.

CASE NOTES

Cited: Wells v. Clinton, 282 Ark. 20, 666 S.W.2d 684 (1984).

22-2-107. Creation of sections.

(a) There are created within the Arkansas Building Authority the following sections which shall have the duties and responsibilities designated by the Director of the Arkansas Building Authority with the approval of the Arkansas Building Authority Council and which may include, in relation to other provisions of this chapter, the duties and responsibilities respectively designated in this section:

(1) CONSTRUCTION SECTION. The Construction Section shall:

(A) Supervise the bidding and awarding of contracts for new construction and renovations for or by state agencies' capital improvements;

(B) Establish and maintain complete construction files on all jobs, including plans and specifications for alterations, renovations, and repairs of all capital improvements;

(C) Approve all proposed contracts, change orders, and final payments requests;

(D) Ensure that on-site observation of all construction projects, alterations, and repairs is accomplished on a regular basis and maintain records of those observations;

(E) Obtain and maintain construction inspection reports from architects or engineers or their consultants from state agencies and institutions for all capital improvement construction projects;

(F)(i) Conduct visits with the design professional to determine the responsibility and performance required by the contract documents.

(ii) On-site observations by design professionals shall concur with the contractor's payment request and shall be submitted in written form with the pay request.

(iii) The inspection reports shall be as adopted by the council.

(iv) State agencies shall engage the services of licensed architects or engineers for all projects covered by the Arkansas Architectural Act, § 17-15-101 et seq., and the Arkansas Engineering Act, § 17-30-101 et seq.;

(G) Ensure that the construction of all projects complies with the contract documents; and

(H)(i) Establish and manage a list of contractors desiring written notice of invitations to bid and establish by regulation a fee, not to exceed twenty-five dollars (\$25.00) annually, for receiving a written notice of an invitation to bid.

(ii) Subscription fees collected pursuant to this section shall be deposited in the Arkansas Building Authority Fund;

(2) **BUILDING OPERATIONS SECTION.** The Building Operations Section shall:

(A) Operate, maintain, and manage public buildings as required by the provisions of this chapter or otherwise by law;

(B) Provide for maintenance and operation, including janitorial services for any buildings, structures, or grounds which are owned, leased, or managed by the authority as may be required by the provisions of this chapter; and

(C) Develop and, upon adoption by the council, enforce procedures, standards, and criteria designed to standardize the level of maintenance on all public buildings and other capital improvements;

(3) **DESIGN REVIEW SECTION.** The Design Review Section shall:

(A) Establish procedures approved by the council for the selection of engineering, environmental, architectural, and building design consultants' services by state agencies and by the authority. The procedures shall ensure an equitable opportunity for all persons and firms;

(B) Encourage, within the rules and regulations of the state, the timely and expedient commitment and expenditure of appropriations for capital improvements;

(C) Establish standard fee schedules approved by the council for design professional consultant services for capital improvements;

(D) Develop and upon adoption by the council establish minimum design standards and criteria, which shall be made available to all design professionals in the state;

(E) Utilize, require, or undertake studies concerning the needs for and costs of proposed capital improvements;

(F) Review and approve, consistent with the provisions of this chapter, contracts for design professional consultant services, preliminary plans, cost estimates, building programs, feasibility studies, and construction bid documents for capital improvements and mediate architectural and engineering design and construction-related problems;

(G) Assist in analyzing architectural and engineering design and construction problems at state-owned facilities; and

(H) Ensure that state agencies shall engage the services of licensed architects and licensed engineers for all appropriate capital improvement projects contracted which are not exempted by the requirements of:

(i) The Arkansas Architectural Act, § 17-15-101 et seq.;

(ii) Section 17-30-101 et seq.; and

(iii) Section 22-9-101 et seq.

(I) The director shall employ within the Design Review Section of the authority a State Architect and a State Engineer who shall have sufficient private practice experience within his or her respective field as well as be registered and licensed within the state;

(4) **REAL ESTATE SERVICES SECTION.** The Real Estate Services Section shall:

(A) Develop and enforce minimum leasing, sale, and purchase of property standards and criteria for consideration and adoption by the council;

(B) Design standard lease forms to be approved by the council for use by state agencies as provided in this chapter;

(C) Assist state agencies and the council in determining and evaluating rental space needs and the allocation of space for state agencies;

(D) Conduct surveys to determine available rental space which meets minimum leasing standards and criteria and which may be available for use by state agencies;

(E) Otherwise carry out and administer those duties and responsibilities delegated to the section by the director and assist state agencies and the council to ensure that rental space acquired and utilized by state agencies is acquired and utilized in a manner consistent with the intent of this chapter so that no state agency shall lease space which is not absolutely essential to the efficient performance of its duties and responsibilities; and

(F) Carry out and administer those duties and responsibilities involving the purchase or sale of property by state agencies which are under the jurisdiction of the authority so as to ensure that the property is sold or purchased in a manner consistent with Arkansas laws and regulations.

(b) The director may transfer the various duties and functions among the various sections of the authority and effect any other organizational or administrative changes that may be necessary to bring about the efficient and effective implementation of this chapter.

History. Acts 1975, No. 716, § 5; A.S.A. 1947, § 5-1022; Acts 1987, No. 815, §§ 1, 2; 1995, No. 983, § 1; 1999, No. 494, § 1; 2001, No. 542, § 1; 2003, No. 364, §§ 9, 10; 2003, No. 827, §§ 1, 2.

Amendments. The 1999 amendment added (a)(1)(H).

The 2001 amendment substituted "in this section" for "below" in the introductory language of (a); inserted subsection headings; substituted "Conduct visits by the design professional" for "The design professional shall conduct visits" in (a)(1)(F)(i); substituted "the council" for "the State Building Services Council" in (a)(1)(F)(iii), (a)(2)(C), (a)(3)(A), (a)(4)(A), and (a)(5)(A); substituted "Operations" for "Operation/Maintenance" in (a)(2); deleted "Arkansas" preceding "State Building" in (a)(2)(B), (a)(3)(A), and (a)(5)(A);

substituted "Real Estate Services" for "Leasing" in the introductory language in (a)(4) and (a)(4)(E); inserted "sale, and purchase of property" in (a)(4)(A); inserted (a)(4)(F); and made minor stylistic changes throughout.

The 2003 amendment by No. 364 deleted "Approve methods of finance and" from the beginning of (a)(1)(B); inserted "final" in (a)(1)(C); substituted "observation" for "inspection" and "observations" for "inspections" in (a)(1)(D); substituted "with" for "by" in (a)(1)(F)(i); inserted "by design professionals" in (a)(1)(F)(ii); substituted "capital improvements" for "construction" in (a)(3)(B).

The 2003 amendment by No. 827 rewrote (a)(3); and repealed former (a)(5), concerning the "Engineering Section."

22-2-108. Powers and duties generally.

As may be provided, allowed, or limited by the provisions of this chapter, the Arkansas Building Authority Council is authorized and empowered to establish policies, guidelines, standards, and procedures which shall guide and govern the Arkansas Building Authority with regard to the following responsibilities, duties, powers, and activities:

(1) To investigate and obtain information concerning the various boards, commissions, authorities, agencies, departments, and offices of the state, which are the "state agencies", in relation to:

(A) Where they are housed;

(B) Their present and projected needs for space and facilities;

(C) The rental being paid and the rental that state agencies could reasonably pay for space and facilities in public and private buildings; and

(D) The public building space and facilities that can be feasibly financed from appropriated funds available to the authority;

(2)(A) To construct and equip buildings or to acquire by gift or purchase existing buildings and the sites upon which they are situated for use as public buildings.

(B) However, before the authority may construct and equip buildings or acquire by purchase existing buildings and the sites upon which they are situated for use as public buildings, requests for the construction and equipping of those buildings or the acquisition of those existing buildings shall have been first submitted to the General Assembly or to the Legislative Council when the General Assembly is not in session, and the General Assembly shall have reviewed and appropriated the funds therefor or specifically approved the method of funding their construction, equipping, or acquisition thereof;

(3)(A) To provide for the operation and management of the public buildings so constructed or acquired and arrange for the housing of state agencies as space and facilities permit and to rent and lease space and facilities upon such terms and conditions and for such rentals as the authority may determine.

(B) Should there be any surplus space in a public building above the requirements of the state agencies that can be feasibly housed in the building, then the authority may lease or rent the surplus space to individuals and organizations other than state agencies until it is needed by state agencies;

(4) To use the lands acquired by the Arkansas Revenue Department Building Commission which were transferred to the authority under Acts 1975, No. 716, § 6, as sites for public buildings and acquire additional sites as provided in § 22-2-109;

(5) To wreck, remove, and dispose of or salvage buildings or other improvements as necessary for the construction and equipping of public buildings or for future use of an unspecified project;

(6) To purchase, lease, or rent and receive devises, bequests, or donations of and sell or otherwise dispose of any property, real,

personal, or mixed, on its own behalf and without the approval of any other board, commission, agency, department, or officer, and the council may convert into money any property bequeathed or donated to it or not needed or which cannot be used in the form received;

(7)(A) To execute contracts necessary to accomplish the purposes of this chapter.

(B) However, no contract shall be entered into for the purchase of any real property unless the authority shall have first submitted for review to the General Assembly or to the Legislative Council when the General Assembly is not in session a request to purchase the property, and the General Assembly shall have provided the funds for or shall have approved the method of funding the purchase;

(8) To apply for, receive, accept, and use any moneys and properties from:

(A) The United States or any state, or any department or agency thereof;

(B) Any public or private corporation of any nature; and

(C) Any individual or group;

(9)(A) To establish, promulgate, and enforce minimum design and construction standards and criteria for all capital improvements undertaken by any state agency, including, but not limited to, procedures regarding the bidding and awarding of capital improvements and suspension and debarment of contractors regarding projects under the jurisdiction of the authority.

(B) However, the authority shall not engage in the production of architectural plans and specifications, with the exception that the architects and engineers employed by the authority may provide and make available technical assistance to the authority's sections listed in § 22-2-107 and other agencies regarding capital improvements involving roofing projects, repairs, alterations, or renovations;

(10) To establish and enforce minimum standards and criteria for the management, maintenance, and operation of all public buildings and capital improvements;

(11) To establish and enforce minimum standards and criteria for the leasing and renting of space for and by state agencies;

(12) To provide for the management, maintenance, and operation of those public buildings as may be required by this chapter or otherwise by law to be managed, maintained, or operated by the authority and provide technical advice on management, maintenance, and operation to agencies with existing capital improvements;

(13) To provide monthly reports to the Legislative Council and to the Governor, or as otherwise may be requested by the Legislative Council, the Governor, or the General Assembly;

(14) To obtain and keep on file copies of architectural and engineering plans and construction documents for all public buildings and capital improvements, including those plans and documents for all existing public buildings and capital improvements for which plans and documents exist;

(15)(A)(i) To assume all duties and responsibilities for minor alterations and repairs of existing public buildings and capital improvements previously vested within the Office of State Procurement by Acts 1955, No. 313 [repealed], as amended by Acts 1959, No. 29 [repealed], as implemented and developed by the Construction Section.

(ii) These duties and responsibilities of the office are transferred to the authority.

(B) It is the intent of this chapter that the above-mentioned and all other duties and responsibilities of the Construction Section shall be transferred to the authority, including approval authority for real property purchases by any agency, board, commission, or department; and

(16) To promulgate reasonable rules, regulations, and procedures as may be required to carry out its duties, responsibilities, powers, and authorities under this chapter which are consistent with the purposes and intent of this chapter.

History. Acts 1975, No. 716, § 3; 1983, No. 734, § 1; A.S.A. 1947, § 5-1020; Acts 1999, No. 1173, § 2; 2003, No. 364, § 11.

Amendments. The 1999 amendment rewrote (2)(B); substituted “in the building” for “therein” in (3)(B); added “or for future use of an unspecified project” at the end of (5); inserted “devises” in (6); rewrote (7)(B) and (8)(B); and made stylistic changes.

The 2003 amendment, in (9)(A), inserted “establish” and added the language beginning “including, but not”; and, in (9)(B), twice substituted “the authority” for “Arkansas State Building Services” and substituted “the authority’s” for “Arkansas State Building Services.”

CASE NOTES

Transfer of Land for Public Purpose.

Former law creating Public Building Authority with authority to acquire lands specifically recognized that the lands were to be acquired for public purposes; thus, transfer of land from a state building commission to the Public Building Authority did not violate the constitutional pro-

vision prohibiting the using of tax moneys levied for one purpose for any other purpose. *Morgan v. Sparks*, 258 Ark. 273, 523 S.W.2d 926 (1975) (decision under prior law).

Cited: *Wells v. Clinton*, 282 Ark. 20, 666 S.W.2d 684 (1984).

22-2-109. Acquisition of additional sites.

(a)(1) Additional sites may be acquired from state agencies, either with or without compensation, by making necessary arrangements with any state agency for any lands owned by that state agency or owned by the State of Arkansas and under the control or jurisdiction of that state agency.

(2) In the alternative, a site may be obtained by the Arkansas Building Authority by gift, purchase, or, within Pulaski County, Arkansas, by condemnation under the power of eminent domain.

(b)(1) In the event the sites cannot be purchased by negotiation, the authority is authorized to institute condemnation proceedings under the power of eminent domain for the acquisition of sites.

(2)(A) Condemnation proceedings under the power of eminent domain may be exercised within Pulaski County, Arkansas, in the manner now provided in §§ 18-15-1202 — 18-15-1207 or pursuant to any other applicable statutory provisions for the exercise of the power of eminent domain in the State of Arkansas or by any state agency.

(B) However, in the event the authority shall acquire under the power of eminent domain a building which is a general purpose office building located within the Capitol Zoning District, as zoned by § 22-3-302(a), the following provisos shall be applicable:

(i)(a) In addition to all other elements constituting just compensation for the taking of property, which are usually and regularly considered in condemnation actions, an owner-tenant may be entitled to reasonable moving expenses for the moving of that tenant to a location within Pulaski County, Arkansas.

(b) The reasonable moving expense shall be fixed by the court and at its discretion;

(ii)(a) Upon a final award in such a condemnation proceeding, the court in which the action is being undertaken may grant the condemnee in an owner-occupied structure the right to remain in occupation of the structure without payment of rent by the owner-occupier for a reasonable period of time to be determined in the discretion of the court, but such period of time shall not exceed three (3) years.

(b) However, if the monetary award is demanded by the condemnee and paid pursuant to the award, the court shall fix a reasonable rental for that part of the property occupied by the condemnee subsequent to the final award. All other tenants occupying all or any part of the condemned premises, by lease or otherwise, shall pay rentals to the condemnor from the date of the final award or payment and so long as such tenants occupy the premises or any part thereof.

(c) Title to all lands acquired under this chapter shall be taken in the name of the State of Arkansas; and

(iii) Should the owner of the building being acquired under the power of eminent domain also own unimproved property adjacent to or near the building and should there be a connected or unity of use between the condemned building and the unimproved property, including a parking lot adjacent to or near an office building, the authority shall be obliged to also take by purchase or under the power of eminent domain such unimproved property.

History. Acts 1975, No. 716, § 3; A.S.A. 1947, § 5-1020; Acts 1999, No. 1173, § 3. **Amendments.** The 1999 amendment made stylistic changes.

CASE NOTES

Cited: Wells v. Clinton, 282 Ark. 20, 666 S.W.2d 684 (1984).

22-2-110. Schedule of supervision generally.

The powers, authorities, and responsibilities of the Arkansas Building Authority Council relating to the acquisition of properties and to the supervision of all capital improvements, as defined in § 22-2-102, shall be in accordance with the schedules of supervision as provided in §§ 22-2-111 — 22-2-113.

History. Acts 1975, No. 716, § 7; A.S.A. 1947, § 5-1024.

22-2-111. Schedule of supervision — Type one — Undesignated funds.

From the funds appropriated by the General Assembly to the Arkansas Building Authority not designated to be spent for a particular public building or capital improvement for a particular state agency, the authority:

(1)(A) Use the lands acquired by the Arkansas Revenue Department Building Commission which are transferred to the authority under Acts 1975, No. 716, § 6, as sites for public buildings and obtain additional sites as provided in this chapter.

(B)(i) The additional sites may be obtained either with or without compensation by making necessary arrangements with any state agency for any lands owned by the state agency or by the State of Arkansas and under the control or jurisdiction of that state agency.

(ii) In the alternative, a site may be obtained by the authority by gift, purchase, or condemnation under the power of eminent domain at any suitable location.

(C) In the event the needed sites cannot be purchased by negotiation, the authority is authorized to institute condemnation proceedings in Pulaski County, Arkansas, under the power of eminent domain for the acquisition of sites.

(D) Condemnation proceedings under the power of eminent domain may be exercised within Pulaski County, Arkansas, in the manner now provided by §§ 18-15-1202 — 18-15-1207, or pursuant to any applicable statutory provisions for the exercise of the power of eminent domain by the State of Arkansas or by any state agency.

(E) Title to all lands acquired under this chapter shall be taken in the name of the State of Arkansas;

(2) Construct, repair, renovate, alter, and equip buildings and capital improvements or acquire, by gift or purchase, existing buildings or capital improvements and the sites upon which they are situated for use as public buildings;

(3)(A) Operate, manage, maintain, and otherwise provide for the operation of the public buildings or capital improvements so con-

structed or acquired and arrange for the housing of state agencies as space and facilities permit upon such terms and conditions and for such rentals as the authority may determine.

(B) Should there be any surplus space in a public building above the requirements of state agencies that can be feasibly housed in the building, the authority may lease or rent the surplus space to individuals and organizations other than state agencies until it is needed by state agencies; and

(4) Demolish, remove, and dispose of or salvage any buildings or other capital improvements as necessary for the construction and equipping of public buildings or capital improvements.

History. Acts 1975, No. 716, § 7; A.S.A. 1947, § 5-1024; Acts 1999, No. 1173, § 4.

Amendments. The 1999 amendment deleted "within Pulaski County, Arkan-

sas" at the end of the introductory paragraph; substituted "Demolish, remove" for "Wreck and remove" at the beginning of (4); and made stylistic changes.

22-2-112. Schedule of supervision — Type two — Designated funds.

From the funds appropriated by the General Assembly to the Arkansas Building Authority for the construction or purchase of a particular building or capital improvement which is specifically designated to be purchased, constructed, or improved for a particular state agency, the authority shall carry out the powers, authorities, and responsibilities in respect to that construction or purchase as designated in § 22-2-111. The authority shall review and approve architectural and engineering design plans and construction plans to ensure compliance with minimum design and construction standards and criteria promulgated by the Arkansas Building Authority Council pursuant to this chapter. The authority shall negotiate all contracts for architectural and engineering and construction services and revisions and modifications to those contracts.

History. Acts 1975, No. 716, § 7; A.S.A. 1947, § 5-1024; Acts 1999, No. 1173, § 5.

Amendments. The 1999 amendment rewrote this section.

22-2-113. Schedule of supervision — Type three — All other cases.

(a) In all other cases, within or without Pulaski County, Arkansas, when the construction of public buildings or capital improvements is undertaken or is presently being undertaken or is authorized but not presently under contract by or for a state agency, then the Arkansas Building Authority shall serve in a technical advisory capacity to advise an agency in relation to that agency's capital improvement and to perform review and approval duties, specifically including, but not limited to, the provision and performance of the following services and duties:

(1) Consult with the agency as to the need for and the type, cost, and design of the capital improvement;

(2) Assist the agency in reviewing architectural proposals and advising the agency in the selection of persons to perform architectural and engineering services, but the agency shall have the responsibility of selecting those persons. However, nothing in this subdivision (a)(2) shall affect the power and responsibility of the authority to review and approve architectural and engineering design plans and to negotiate contracts for architects' and engineers' services as otherwise provided in this section;

(3) Review and approve architectural and engineering plans and designs to ensure compliance with minimum design and construction standards and criteria promulgated by the Arkansas Building Authority Council pursuant to this chapter;

(4) As agent for the state agency, negotiate and approve any contractual terms, relationships, or responsibilities for architectural and engineering services;

(5) Assist the state agency in receipt of bids for construction contracts necessary for the capital improvement if bids are required by law;

(6) Advise and assist the agency in the selection of persons to perform construction services, but the agency shall have the responsibility of selecting the persons to perform the services. However, nothing in this subdivision (a)(6) shall affect the powers and responsibilities of the authority consistent with subdivisions (a)(7) and (8) of this section;

(7) Review and approve construction plans so as to ensure compliance with minimum construction standards and criteria promulgated by the council as provided in this chapter;

(8) As agent for the agency, negotiate and approve all construction contracts and revisions and modifications thereto necessary for the capital improvement;

(9) Assist and advise the state agency as to the operation, management, and maintenance of the capital improvement. However, the operation, management, and maintenance shall be in accordance with minimum standards as promulgated by the council;

(10) Otherwise take such action as may be necessary to carry out the policies, standards, criteria, and other rules and regulations as may be adopted or promulgated by the council to implement the provisions of this chapter.

(b)(1) The boards of trustees of the University of Arkansas, Arkansas State University, University of Central Arkansas, Henderson State University, Arkansas Tech University, and Southern Arkansas University, respectively, are exempt from review, consultation, assistance, advice, and approval by the authority for those items listed in subsection (a) of this section. Upon approval of the Department of Higher Education, the governing boards of all other public institutions of higher education shall be exempt from review and approval by the authority for those items listed in subsection (a) of this section. Provided that prior to granting such approval, the department shall have reviewed and approved policies and procedures adopted by the governing board with respect to bidding and construction of capital

improvement projects. Nothing in this subdivision (b)(1) shall prevent any of the foregoing institutions exempt from review and approval of the authority from entering into an agreement with the authority to provide reviews and approval of all items listed in subsection (a) of this section.

(2) However, any of the foregoing boards, which are exempt as set forth in subdivision (b)(1) of this section and which do not enter into an agreement with the authority, shall adopt policies and procedures involving the bidding and awarding of capital improvement contracts and shall furnish such policies and procedures to the department for its review and advice. It is the intention of this section that any and all adopted policies and procedures pertaining to the bidding and awarding of capital improvement contracts from public funds as stated herein shall provide a uniformity among the foregoing institutions with respect to the policies and procedures to be followed.

History. Acts 1975, No. 716, § 7; A.S.A. 1947, § 5-1024; Acts 2001, No. 961, § 9.

Amendments. The 2001 amendment redesignated the former introductory language as the introductory language of (a)

and inserted "Arkansas"; substituted "Arkansas Building Authority Council" for "council" in (a)(3); added (b); and made minor stylistic changes throughout.

22-2-114. Leasing responsibilities.

(a) It is the intent of the General Assembly that state agencies be housed, whenever possible, in public buildings as soon as space and facilities in public buildings are available and that the acquisition and granting of leasehold interests in land be regulated and supervised by the Arkansas Building Authority. The authority and all other state agencies are authorized and directed to implement that intent as follows:

(1)(A) The authority is given the authority and responsibility to act as the leasing agent for all state agencies and component parts thereof, acting either as lessor or lessee, and to act as the agent for leasing space in all public buildings located in the State of Arkansas.

(B) In addition, the authority is given the authority and responsibility to act as the leasing agent for any nonagency state entity if requested in writing by a nonagency state entity to act in that manner and if the responsibility for the services is accepted in writing by the authority.

(C)(i) After July 1, 1975, no state agency shall enter into or renew or otherwise negotiate a lease between itself as lessor or lessee and a nongovernmental or other government lessor or lessee.

(ii) The authority shall determine the needs of the state agency, locate appropriate rental space, and act as the agent for the state agency in negotiating the lease for the rental space;

(2) All state agencies and component parts thereof, when requested by the authority, shall execute and enter into leases with the authority for the leasing or renting of space and facilities in any public buildings. The leases may be upon such conditions, for such terms, for such

rentals, and may contain such other provisions as may be determined by the Arkansas Building Authority Council and the state agency involved to be appropriate and in the best interests of all concerned;

(3) Any state agency or component part thereof needing new or additional space shall notify the authority, and the authority shall prepare a lease for the space based upon the standards and criteria as adopted by the council. If space is available in a public building, the lease will be negotiated for placement in the public building;

(4) If the Leasing Section of the authority determines that adequate space is not available in public buildings, it shall act as provided in subdivision (a)(1) of this section to obtain adequate space from a privately owned facility;

(5)(A)(i) The council shall adopt standards and criteria for the leasing and utilization of space and the allocation of space to state agencies.

(ii) These standards and criteria shall be used as a basis for all planning, leasing of space, allocation of space to state agencies, or advising state agencies on leasing considerations.

(iii) These standards and criteria shall include, but not be limited to, equipment, work stations, private offices, conference rooms, reception areas, general equipment, vaults, and the necessary space to ensure adequate and effective circulation within and access to all state agencies, including parking and traffic patterns.

(B) In cities and towns having a population of less than twenty-five thousand (25,000) according to the last federal decennial census, for those state agencies providing direct public access services, preference shall be granted to lease space located in existing buildings in the central business district, as defined by the locality's planning commission, or, in the absence thereof, by the municipality's governing body, except in cases where location within the central business district would impair or restrict the intent of the services being provided to the public or the state's proximity to other state or nongovernmental services or where rental rates justify other locations;

(6) Leases as to office space, buildings, structures, parking lots, and grounds from private individuals, firms, and corporations by state agencies and component parts thereof shall be on a standard lease form approved by the council. The standard lease form shall contain all terms and conditions deemed necessary based on the type and purpose of the leased property. The council also shall adopt a standard lease form to be used by state agencies when subleasing from the authority. Both standard lease forms shall be approved as to the legality of form and content by the Attorney General before becoming a requirement; and

(7) The authority shall obtain and maintain files of all leases in existence from and after July 1, 1975, to which a state agency or component part thereof is a party.

(b) All leases referred to in this section and all covenants and agreements contained therein shall be binding in all respects upon the

parties thereto and their successors, and all the provisions thereof shall be enforceable by mandamus and other remedies provided by law.

(c) This section shall not apply to the State Highway Commission, the Arkansas State Highway and Transportation Department, or the Arkansas State Game and Fish Commission.

History. Acts 1975, No. 716, § 8; 1979, No. 411, § 1; A.S.A. 1947, § 5-1025; Acts 1999, No. 859, § 1; 2001, No. 238, § 1.

A.C.R.C. Notes. Acts 2003, No. 13, § 3, provided: "LEASING FROM STATE BUILDING SERVICES. The Board of Hearing Instrument Dispensers shall be exempt from Arkansas State Building Services leasing jurisdiction and procedures as set out in Arkansas Code 22-2-114. The provisions of this section shall be in effect only from July 1, 2003 through June 30, 2005."

Amendments. The 1999 amendment added (a)(5)(B); and made stylistic changes.

The 2001 amendment, in (a), deleted "such" preceding "public" in the introductory language; redesignated former (a)(1) as present (a)(1)(A) and (a)(1)(C); added (a)(1)(B); in (a)(2), deleted "shall" following "thereof," inserted "shall" preceding "execute," and substituted "State Building Services Council" for "council"; substituted "subdivision (a)(1) of this section" for "subdivision (1) of this subsection" in (a)(4); redesignated former (a)(5)(A) as present (a)(5)(A)(i) through (a)(5)(A)(iii); substituted "also shall" for "shall also" in (a)(6); and made related changes.

22-2-115. Lease-purchase agreements.

(a) For the express purpose of providing adequate office facilities, the Arkansas Building Authority Council, acting as the primary lessor, is authorized to enter into lease-purchase agreements to obtain facilities for state agencies. Each lease-purchase agreement shall contain a provision whereby the agreement shall be cancelled at the close of each fiscal biennium, if necessary, if funds for the payment of the rent under the lease-purchase agreement will not be available.

(b) The council shall make final determination, with the advice and consent of the appropriate state agency, regarding the location or construction of facilities. All agreements and other matters concerning the buying, trading, selling, renting, renovating, or acquiring of any real or personal property as authorized by this section shall be matters of public record and available for public inspection.

(c) The General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., the Arkansas Procurement Law, § 19-11-201 et seq., the Revenue Stabilization Law, § 19-5-101 et seq., and other applicable fiscal laws of this state shall be strictly complied with regarding this section.

History. Acts 1979, No. 129, §§ 1-3; A.S.A. 1947, §§ 5-1025.1 — 5-1025.3.

22-2-116. Maintenance responsibilities generally.

(a) The Arkansas Building Authority shall provide for the management, maintenance, and operation of public buildings as may be

required by the provisions and implementation of this chapter, or as may otherwise be required by law.

(b) The authority may enter into agreements with agencies to provide for the management, maintenance, and operation of those public buildings which are not owned by the authority.

History. Acts 1975, No. 716, § 9; A.S.A. added (b); and substituted “Arkansas 1947, § 5-1026; Acts 2003, No. 364, § 12. Building Authority” for “State Building
Amendments. The 2003 amendment Services” in (a).

22-2-117. Maintenance responsibilities — Capitol Zoning District.

(a) As to all presently existing public buildings and capital improvements within the Capitol Zoning District, as zoned by § 22-3-302(a), any person or entity responsible for the custody, management, maintenance, repair, operation, or landscaping of such public buildings and capital improvements and their grounds shall be accountable to the Arkansas Building Authority as follows:

(1) The authority shall approve all plans and expenditures for alterations, repairs, maintenance, operation, management, landscaping, and provisions of utilities of and for the buildings, improvements, and grounds;

(2) The authority shall establish and enforce minimum standards and criteria for the maintenance, management, and operation of the buildings, improvements, and grounds, including the establishment of maintenance schedules;

(3) The authority shall approve the purchase or rental of equipment and supplies for use in the management, maintenance, operation, repair, and landscaping of the buildings, improvements, and grounds.

(b) The Secretary of State shall remain as custodian of the State Capitol Building and the grounds immediately surrounding the State Capitol Building upon which the State Capitol Building is located. The Secretary of State, except as may otherwise be provided by law, shall have full responsibility for the maintenance, management, and operation of the building and its grounds, including the grounds commonly known as the “Mall Area” to the west of the State Capitol Building and the Capitol Hill Building and adjacent parking areas thereto. The Secretary of State shall not be accountable to the authority for such maintenance, management, and operation.

(c) To the extent necessary to carry out the provisions and intent of this section, all laws relating to the powers, duties, and responsibilities of persons or entities regarding the custody and management by those persons of all buildings and grounds within the confines of the Capitol Zoning District, except for the custody and management by the Secretary of State of the State Capitol Building and its immediate grounds as provided in subsection (b) of this section, are amended.

(d) Nothing in this section shall be construed as exempting public buildings and capital improvements located within the Capitol Zoning District from any other applicable provision of this chapter.

History. Acts 1975, No. 716, § 9; A.S.A. 1947, § 5-1026.

22-2-118. Plans, specifications, and estimates of costs.

The Arkansas Building Authority is authorized to employ, except as limited by § 22-2-108(9), such persons as may be necessary to prepare plans, specifications, and estimates of costs for capital improvements which, under the provisions of this chapter, are the responsibility of the authority.

History. Acts 1975, No. 716, § 10; A.S.A. 1947, § 5-1027.

Publisher's Notes. The second sentence of Acts 1975, No. 716, § 10, expressed the intent of the General Assembly that the plans, studies, acquisitions, and constructions undertaken or com-

pleted by the former Arkansas Public Building Authority should be utilized to the greatest possible advantage of the state and that the expenditure of funds which has occurred for those purposes should, to the maximum extent feasible, not be duplicated.

CASE NOTES

Approval of Plans.

Under former law, the advertising and accepting of bids was prohibited until Public Building Authority approved the architect's plans and specifications for the construction of public buildings; thus, the

authority could not let contracts for certain phases of construction before final plans for other stages of the building were complete. *Morgan v. Sparks*, 258 Ark. 273, 523 S.W.2d 926 (1975) (decision under prior law).

22-2-119. Fiscal management — Fund created.

(a) There is created and established on the books of the Treasurer of State and Auditor of State a fund to be known as the Arkansas Building Authority Fund, which shall consist of all moneys received in connection with the leasing, management, and operation of building facilities and lands belonging to or managed by the Arkansas Building Authority. Such moneys received by the authority are declared to be nonrevenue receipts.

(b) The Arkansas Building Authority Council shall have the authority to deposit in the State Treasury all money received in connection with the leasing, management, and operation of building facilities and lands belonging to or managed by the authority.

(c) All moneys received by the authority from the leasing or renting of space or facilities in public buildings acquired or constructed under this chapter or from any other source shall be deposited in the State Treasury to the credit of the authority in such funds or accounts as may have been established by the Treasurer of State pursuant to subsection (a) of this section and shall be used by the authority for the maintenance, operation, and improvement of lands, buildings, and facilities belonging to or under the control of the authority and for such other purposes as may be provided by appropriation of the General Assembly.

History. Acts 1975, No. 716, § 12;
A.S.A. 1947, § 5-1028.

22-2-120. Exemption from statutes concerning Capitol Zoning District.

(a) The construction, acquisition, management, maintenance, or operation of capital improvements and public buildings by the Arkansas Building Authority under this chapter is declared to be exempt from the operation and implementation of the provisions of §§ 22-3-301 — 22-3-311.

(b) The Arkansas Building Authority Council shall endeavor to cooperate with the Capitol Zoning District Commission so as to establish coordinated physical development in the State Capitol area and to promote the uniform and appropriate regulation and development of the State Capitol area.

History. Acts 1975, No. 716, § 13;
A.S.A. 1947, § 5-1029.

22-2-121. Real estate compilation.

(a) The Arkansas Building Authority shall:

(1) Perform a compilation of all real property owned by state agencies, including boards, commissions, and institutions of higher education, the Arkansas State Game and Fish Commission, the Arkansas State Highway and Transportation Department, and the State Highway Commission;

(2) Create a database that shall include a description of each piece of real property owned; and

(3) Maintain the database with current information.

(b) The initial compilation of all real property shall be completed by January 1, 2002.

(c) All state agencies identified in subdivision (a)(1) of this section shall provide the necessary information to the authority.

(d) The authority, in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., may adopt rules and regulations necessary to administer the provisions of this section.

History. Acts 2001, No. 325, § 1; 2003, No. 364, § 13.

Amendments. The 2003 amendment substituted “Arkansas Building Authority” for “Arkansas State Building Service-

es” in the introductory language of (a); added “the Arkansas State Game ... Highway Commission” to (a)(1); rewrote (c); and substituted “The authority” for “State Building Services” in (d).

CHAPTER 3

PUBLIC BUILDINGS AND OTHER FACILITIES

SUBCHAPTER

- 1. GENERAL PROVISIONS. [RESERVED.]**
- 2. CAPITOL BUILDING AND GROUNDS GENERALLY.**

SUBCHAPTER.

3. CAPITOL ZONING DISTRICT.
4. CAPITOL PARKING CONTROL.
5. CAPITOL ARTS AND GROUNDS COMMISSION.
6. TWENTIETH CENTURY WAR VETERANS MONUMENT. [TRANSFERRED.]
7. [RESERVED.]
8. GOVERNOR'S MANSION.
9. ARKANSAS JUSTICE BUILDING.
10. WAR MEMORIAL STADIUM.
11. LIVESTOCK SHOW FACILITIES.
12. PUBLIC FACILITIES FINANCING.
13. VENDORS.
14. STATE AGENCIES FACILITIES ACQUISITION ACT.
15. CAPITOL BUILDING PARKING FACILITY.
16. MEDAL OF HONOR MONUMENT. [REPEALED.]
17. FIREFIGHTERS MONUMENT.

Cross References. Smoking policy, state offices, § 25-1-102.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved]

SUBCHAPTER 2 — CAPITOL BUILDING AND GROUNDS GENERALLY

SECTION.

- 22-3-201. Lands adjacent to State Capitol to remain state property.
- 22-3-202. Secretary of State as custodian.
- 22-3-203. Use of Senate and House Chambers.
- 22-3-204. List of equipment in Senate and House Chambers.
- 22-3-205. Leasing of restaurant or cafe in State Capitol Building.
- 22-3-206. Agreements with public utility companies.
- 22-3-207. Permanent press room.
- 22-3-208, 22-3-209. [Superseded.]
- 22-3-210. Trespassing upon State Capitol grounds.
- 22-3-211. Power of custodian to make arrests.

SECTION.

- 22-3-212. Skating in State Capitol Building with metal skates.
- 22-3-213. Fines paid into State Treasury.
- 22-3-214. [Repealed.]
- 22-3-215. Vietnam Veterans' Monument.
- 22-3-216. Law Enforcement Officers' Memorial.
- 22-3-217. Rules and regulations — Management.
- 22-3-218. Relocation — Vacant areas.
- 22-3-219. Monument to honor veterans of twentieth-century wars.
- 22-3-220. Smoking in State Capitol Building prohibited.

Cross References. Distribution among funds, § 19-5-201 et seq.

Preambles. Acts 1935, No. 59, contained a preamble which read: "Whereas, public convenience requires that a restaur-

ant or cafe be conducted in the State Capitol Building under proper supervision as to sanitation and personnel; and

"Whereas, no provision of law now authorizes or directs the custodian of the

properties to enter into an agreement based upon a monetary consideration; and

"Whereas, under present arrangements the state is paying the cost of light, gas, water, etc., utilized in the operation of said cafe or restaurant, which represents a net loss;

"Now therefore..."

Effective Dates. Acts 1907, No. 310, § 3: effective on passage.

Acts 1911, No. 22, § 4: effective on passage.

Acts 1917, No. 150, § 6: Mar. 1, 1917. Emergency declared.

Acts 1919, No. 323, § 6: Mar. 21, 1919. Emergency declared.

Acts 1935, No. 59, § 2: approved Feb. 20, 1935. Emergency clause provided: "It is found as a matter of fact that the lack of legal authority to receive bids as herein contemplated is resulting in the loss of revenue approximating more than \$100 per month, and this act being necessary for the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take full force and effect from and after its passage."

Acts 1939, No. 67, § 4: approved Feb. 9, 1939. Emergency clause provided: "Whereas, the State of Arkansas has gone to considerable expense to improve the physical condition of the House and Senate Chambers, and whereas, the use of the House and Senate Chambers for any and all purposes will result in a substantial impairment of the physical improvements made by the State of Arkansas, now therefore, an emergency is hereby declared and this act being necessary for the preservation of state property and for the peace, health and safety of the state shall take effect and be in full force from and after its passage."

Acts 1963, No. 507, § 9: Mar. 20, 1963. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that there is an acute shortage of parking facilities on the State Capitol Grounds, that said shortage of parking facilities, together with inadequate traffic control, adversely affects the proper operation of the State Government in that people having business with the state do not have easy access to the several state offices, departments and agencies, that existing law has failed to solve the aforesaid problems, that such condition should be remedied at the earliest

possible time, and that only by the immediate operation of this act may such condition be alleviated. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force on and after its passage and approval."

Acts 1972 (Ex. Sess.), No. 56, § 5: Mar. 1, 1972. Emergency clause provided: "It is hereby found and determined by the General Assembly that certain utility lines and facilities owned by the State of Arkansas and located on the State Capitol Grounds are no longer serviceable and that temporary facilities have been erected on the Grounds for providing services to the various buildings on the Grounds; that it is necessary that such temporary facilities be removed and that permanent facilities be installed as soon as possible in order that adequate service to the various state agencies on the Capitol Grounds may be provided; that there is presently no law specifically authorizing the state to enter into agreements with public utilities regarding the installation of utility lines and facilities on the Capitol Grounds and that this act is immediately necessary to grant such authority in order that utility services may be provided the various agencies and departments located on the Capitol Grounds. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 394, § 7: Mar. 10, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that many thousands of Arkansans served in the armed forces of the United States in Vietnam; that the Arkansas Vietnam veterans have not received the recognition and honor that they deserve for the service to their country in the Vietnam Conflict; that this act is designed to provide for the erection and maintenance of an appropriate monument on the State Capitol Grounds as soon as funds are made available therefor, as a symbol of recognition and appreciation of the state and its citizens to Arkansas Vietnam veterans; that this act should be given effect at the earliest possible date in order that interested persons may make contributions and donations to the Vietnam

Veterans Monument Fund and thereby enable the Secretary of State to begin construction of the monument in the near future. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1068, § 21: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993."

Acts 1995 (Ex. Sess.), No. 10, § 24: Oct. 23, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the current law relating to the operation of interim committees of the General Assembly unduly restricts the interim work of the General Assembly by authorizing committees to meet only as joint committees of the House of Representatives and the Senate; that in order to enable the Senate and House of Representatives to efficiently and effectively perform their interim duties, it is necessary that the interim committees of each house be authorized to meet either jointly or separately and that this act should be given effect immediately to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1285, § 32: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-first

General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety Section 10 of this act shall be in full force and effect from and after the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, Section 10 shall become effective on the expiration of the period of time during which the governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, Section 10 shall become effective on the date the last house overrides the veto. The remaining sections of this act shall become effective from and after July 1, 1997."

Acts 2000 (Ex. Sess.), No. 3, § 2: Apr. 11, 2000. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that second-hand smoke is a detriment to the health of people who work in and visit the State Capitol Building as well as damaging to the building, its displays, and other contents; that this act will prohibit smoking in the State Capitol Building; and that this act should become effective as soon as possible in order to protect the health of people who work in and visit the State Capitol Building. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

22-3-201. Lands adjacent to State Capitol to remain state property.

All of the lands belonging to the State of Arkansas adjacent to the State Capitol Building and commonly designated as the "New State Capitol tracts of land" shall forever be and remain the property of the State of Arkansas.

History. Acts 1907, No. 310, § 1, p. 736; C. & M. Dig., § 9182; Pope's Dig., § 11868; A.S.A. 1947, § 5-201.

22-3-202. Secretary of State as custodian.

(a) The Secretary of State is the constituted and legal custodian of the State Capitol Building, the grounds, and all the furniture and fixtures thereon and therein belonging to the state.

(b) It is the duty of the Secretary of State to report to each General Assembly the condition of the State Capitol Building and of the grounds, furniture, and fixtures and to make recommendations relative to the maintenance of the building and grounds.

History. Acts 1917, No. 150, § 2, p. 803; C. & M. Dig., § 4424; Pope's Dig., § 5455; A.S.A. 1947, § 5-202.

22-3-203. Use of Senate and House Chambers.

(a) It shall be unlawful to use the Senate and House Chambers of the State Capitol Building for any purpose except activities which are necessary for the operation of state government.

(b) As used in this section, "activities" means those which the State of Arkansas controls and finances for all purposes.

History. Acts 1939, No. 67, § 1; A.S.A. 1947, § 5-205. nor as custodian of Senate chamber, § 25-16-301.

Cross References. Lieutenant Gover-

22-3-204. List of equipment in Senate and House Chambers.

(a) At the close of each session of the General Assembly, the Secretary of the Senate shall furnish to the Secretary of State a complete list of all property and equipment in the Senate Chamber, and the Clerk of the House of Representatives shall furnish to the Secretary of State a complete list of all property and equipment in the House Chamber.

(b) The Secretary of State shall, after checking the property, issue a receipt to the Secretary of the Senate for the property of the Senate and to the Clerk of the House of Representatives for the property of the House of Representatives placed in his or her custody.

History. Acts 1939, No. 67, § 2; A.S.A. 1947, § 5-206.

Cross References. Purchase of supplies for General Assembly, § 10-2-222.

22-3-205. Leasing of restaurant or cafe in State Capitol Building.

(a) The Secretary of State, as custodian of the State Capitol Building, the Governor, and the Director of the Department of Health are directed to receive bids or offers for the renting or leasing of the properties now being utilized for a restaurant or cafe and other purposes in the State Capitol Building upon such terms or conditions as, in their judgment, may best serve the interests of the state.

(b) Moneys so received from these rentals shall be deposited in the State Treasury to the credit of the State Apportionment Fund, after which they shall be distributed among the General Revenue Fund Account of the State Apportionment Fund and other funds as provided by law.

History. Acts 1935, No. 59, § 1; Pope's Dig., § 5456; A.S.A. 1947, § 5-207.

22-3-206. Agreements with public utility companies.

(a)(1) The Secretary of State, on behalf of the State of Arkansas, is authorized to enter into agreements with public utility companies regarding the installation, maintenance, and repair of utility service lines and facilities necessary to the delivery of the respective utility services to the various buildings on the State Capitol grounds.

(2) The agreements may include the granting of easements or privileges to public utility companies to install and maintain lines and facilities on the State Capitol grounds and may contain provisions regarding the relative responsibilities of the public utility companies and the State of Arkansas for removing abandoned facilities or relocating lines and facilities on the State Capitol grounds, and may include such other agreements or provisions as shall be deemed appropriate or necessary by the parties.

(3) No contract shall be entered into between the Secretary of State and any public utility until it is submitted to and approved as to form by the Attorney General.

(b)(1) State agencies, departments, and institutions are authorized to enter into agreements with public utility companies for the furnishing of utility services by the contracting utility and the purchase of such services by the state agencies, departments, or institutions.

(2) The agreements may include provisions regarding the service demand of the contracting agency, department, or institution for the utility service involved, the rates to be charged for the services, minimum charges, and such other matters as the contracting parties shall deem appropriate regarding the furnishing and purchase of utility services.

(3) Any rates or charges established in the contracts shall conform to filings made with and approved by the appropriate state regulatory body.

History. Acts 1972 (Ex. Sess.), No. 56, §§ 2, 3; A.S.A. 1947, §§ 5-233, 5-234.

Publisher's Notes. Acts 1972 (Ex. Sess.), No. 56, § 1 provided: "It is hereby found and determined by the General Assembly that some of the utility service lines and facilities owned by the State of Arkansas and located on the State Capitol Grounds are no longer serviceable and that it is necessary that such facilities be replaced as soon as possible; it is further determined that other utility lines and facilities may need extensive repair or replacement in the future; that some public utilities are willing to install new lines, terminals and other facilities and equipment on the State Capitol Grounds for servicing the various buildings thereon but that there is currently no clear-cut authority for any public official or public

body to grant authority for utilities to construct and maintain necessary facilities on the Capitol Grounds or to enter into agreements with such utilities regarding the establishment and maintenance of such facilities; that specific authority should be granted to the appropriate public official to enter into such agreements with public utilities in order that adequate utility services may be provided to various state agencies with offices in the buildings on the Capitol Grounds; that the Secretary of State is designated by law as custodian of the Capitol Building and Grounds and is the appropriate State official to be vested with the authority to contract with utilities on behalf of the State of Arkansas regarding the installation and maintenance of public utility facilities on the Capitol Grounds."

22-3-207. Permanent press room.

(a) Room 152 on the first floor of the State Capitol Building, immediately to the north of the north elevator on the first floor of the State Capitol Building, the same being to the north of the outside east entrance on the first floor of the State Capitol Building, is designated as a permanent press room to be used by newspaper, radio, and television personnel covering the State Capitol.

(b) It shall be the duty of the Secretary of State to maintain the room at all times for the use of the press as provided in this section, and the Secretary of State shall provide necessary janitorial services and office equipment needed by members of the press in the room.

(c) The Secretary of State is prohibited from changing the room number assigned to the room or to nullify or void the provisions of this section.

(d) If the Secretary of State shall fail or refuse to comply with the provisions of this section, any resident of this state may bring an action in the Circuit Court of Pulaski County, Arkansas, for an appropriate order directing the Secretary of State to comply with the provisions of this section. Failure to comply with the order shall be contempt of court and punishable accordingly.

History. Acts 1963, No. 80, §§ 1, 2; A.S.A. 1947, §§ 5-231, 5-232.

22-3-208, 22-3-209. [Superseded.]

A.C.R.C. Notes. These sections, which concerned the State Capitol Grounds Commission, are deemed to be superseded by § 22-3-501 et seq. The former sections were derived from the following sources:

22-3-208. Acts 1963, No. 507, §§ 1, 2, 4, 5; A.S.A. 1947, §§ 5-225, 5-226, 5-228, 5-229.

22-3-209. Acts 1963, No. 507, § 6; A.S.A. 1947, § 5-230.

22-3-210. Trespassing upon State Capitol grounds.

(a) It shall be unlawful for any person to ride, drive, walk, go, or enter upon the public lawns or grounds belonging to the State of Arkansas whereon is located the State Capitol Building, unless such person confines himself to the public driveways or walkways upon the grounds. However, this section shall not apply to the custodian of any state institutions or grounds, nor to any of his or her assistants, deputies, or employees, nor to any grounds laid out and designated by the custodian as playgrounds or public parks.

(b) Any person who violates subsection (a) of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars (\$100).

History. Acts 1919, No. 323, §§ 1, 2; C. & M. Dig., §§ 9183, 9184; Pope's Dig., §§ 11869, 11870; A.S.A. 1947, §§ 5-211, 5-212. **Cross References.** Criminal trespass, § 5-39-203.

22-3-211. Power of custodian to make arrests.

The custodian of any public building or grounds and his or her assistants and deputies are authorized and empowered to arrest any person whom they may see violating § 22-3-210(a) and to take that person, when arrested, before any court of competent jurisdiction to be dealt with according to law.

History. Acts 1919, No. 323, § 3; C. & M. Dig., § 9185; Pope's Dig., § 11871; A.S.A. 1947, § 5-213.

22-3-212. Skating in State Capitol Building with metal skates.

(a) It shall be unlawful for any person above the age of ten (10) years to skate with metal skates or to wear metal skates upon any portion of the State Capitol Building or any of the abutments thereof or approaches thereto.

(b) Any person violating subsection (a) of this section shall be arrested and dealt with in the manner prescribed by law for such offenses.

History. Acts 1919, No. 323, § 5; C. & M. Dig., § 9187; Pope's Dig., § 11873; A.S.A. 1947, § 5-215.

22-3-213. Fines paid into State Treasury.

All fines collected for the violation of §§ 22-3-210 and 22-3-212 shall be paid into the State Treasury and placed to the credit of the State Apportionment Fund, after which they shall be distributed among the General Revenue Fund Account of the State Apportionment Fund and other funds as provided by law.

History. Acts 1919, No. 323, § 4; C. & M. Dig., § 9186; Pope's Dig., § 11872; A.S.A. 1947, § 5-214.

22-3-214. [Repealed.]

Publisher's Notes. This section, concerning the Capitol Art Commission, was repealed by Acts 1997, No. 1043, § 5. The section was derived from Acts 1911, No. 22, §§ 1-3; C. & M. Dig., §§ 839-841;

Pope's Dig., §§ 12096-12098; A.S.A. 1947, §§ 5-216 — 5-218; Acts 1987, No. 660, §§ 1-4. For present law, see § 22-3-501 et seq.

22-3-215. Vietnam Veterans' Monument.

(a) It is found and determined by the General Assembly that many thousands of Arkansans served in the armed forces of the United States in Vietnam, that Arkansas Vietnam veterans have not received the recognition and honor they deserve for the service to their country in the Vietnam Conflict, and that an appropriate monument should be established and maintained on the State Capitol grounds as a symbol of the recognition and appreciation of the State of Arkansas to the Arkansas Vietnam veterans.

(b) The Secretary of State is authorized and directed to cause to be constructed and maintained on the grounds of the State Capitol an appropriate monument to honor Arkansas Vietnam veterans when adequate funds for the construction thereof are deposited in the Vietnam Veterans' Monument Fund created in subsection (d) of this section.

(c)(1) The Secretary of State shall designate four (4) Arkansas Vietnam veterans who, together with the Secretary of State, shall constitute the Vietnam Veterans' Monument Design Committee.

(2) The committee shall meet at such times as it shall determine to be necessary to select a design and site for the Vietnam Veterans' Monument to be erected and maintained on the State Capitol grounds, which design and site shall be subject to the approval of the Capitol Zoning District Commission created by § 22-3-303 or its successor.

(d)(1) The Secretary of State is authorized to accept gifts, grants, and donations from individuals and organizations to be deposited as trust funds in the Vietnam Veteran's Monument Fund, which is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

(2) All funds deposited in the fund shall be used exclusively for the purpose of erecting and maintaining a suitable monument on the State Capitol grounds in recognition and appreciation of Arkansas Vietnam veterans by the State of Arkansas.

History. Acts 1983, No. 394, §§ 1-4; A.S.A. 1947, §§ 5-245 — 5-248.

22-3-216. Law Enforcement Officers' Memorial.

(a) It is found and determined by the General Assembly that unfortunately several law enforcement officers have given their lives in the performance of their duties for the people of this state, that these brave public servants should be honored, and that an appropriate monument should be established on the State Capitol grounds as a symbol of the recognition and appreciation of this state to these individuals.

(b) The Secretary of State is authorized and directed to set aside a location on the State Capitol grounds for the purpose of constructing a memorial which will honor those law enforcement officers who have given their lives in the performance of their duties for the people of this state.

(c)(1) The Governor shall designate a representative from the Arkansas State Police, the Arkansas Sheriffs' Association, the Arkansas Fraternal Order of Police, and the Arkansas Municipal Police Association, who, together with the Secretary of State, shall constitute the Law Enforcement Officers' Memorial Design Committee.

(2) The committee shall meet at such times as it shall determine to be necessary to select a design and site for the memorial to be erected and maintained on the State Capitol grounds. The design and site shall be subject to the approval of the Capitol Zoning District Commission created by § 22-3-303 or its successor.

(d)(1) The committee created by this section is authorized to accept gifts, grants, and donations from individuals and organizations, which shall be used exclusively to finance the construction of the memorial.

(2) The funds shall be deposited as trust funds in the Law Enforcement Officers' Memorial Fund which is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

(3) Nothing in this section shall authorize the expenditure of general revenue funds from the State Treasury.

History. Acts 1985, No. 964, §§ 1-4;
A.S.A. 1947, §§ 5-257 — 5-260.

22-3-217. Rules and regulations — Management.

(a)(1) Any rules, regulations, or modifications concerning the use, management, or authorities of the Capitol Hill Building shall be reviewed and approved by the Joint Interim Committee on Legislative Facilities.

(2) To this end, the management of the Capitol Hill Building shall be the joint responsibility of the Secretary of State and the Joint Interim Committee on Legislative Facilities.

(b) Provided, however, it will be the continued responsibility of the Secretary of State to provide maintenance and upkeep of the Capitol Hill Building.

History. Acts 1993, No. 1068, § 14.

A.C.R.C. Notes. Former § 22-3-217, concerning the management of the Capitol Hill Building, is deemed to be super-

seded by this section. The former section was derived from Acts 1991, No. 1075, § 18.

22-3-218. Relocation — Vacant areas.

(a) In the event an officer or agency relocates an office and related staff from or within the State Capitol Building at the request of the Joint Interim Committee on Legislative Facilities and the officer or agency does not have an appropriation sufficient to pay the moving costs, rents, costs of making necessary modifications to rented space, or other costs associated with the move, the Bureau of Legislative Research of the Legislative Council may expend from appropriations authorized for the bureau such additional funds as may be required to assist such officer or agency in paying the additional costs.

(b) When any area in the State Capitol Building is vacated, the Secretary of State and the Joint Interim Committee on Legislative Facilities shall jointly decide who shall occupy the vacated area.

History. Acts 1995, No. 1312, § 21; 1995 (Ex. Sess.), No. 10, § 20; 1997, No. 267, § 1; 1997, No. 1285, § 18.

22-3-219. Monument to honor veterans of twentieth-century wars.

(a) It is hereby found and determined by the Seventy-eighth Arkansas General Assembly that many thousands of Arkansans served in the armed services of the United States in World War I, World War II, the Korean Conflict, the Vietnam War, and, now, the War in the Persian Gulf, and that many of these veterans have not fully received the honors and recognition deserving of those citizens from a thankful state and nation and that an appropriate monument should be established on the State Capitol grounds as a symbol to honor those men and women who gave their lives and who served with honor in the military service of their nation during war.

(b) The Secretary of State is hereby authorized and directed to cause to be constructed and maintained on the State Capitol grounds an appropriate monument to all the Arkansas veterans of the wars and military conflicts of the twentieth century after an appropriate design has been selected and when adequate funds for the construction thereof are deposited in the Arkansas Military War Veterans Monument Fund herein created.

(c)(1) There is hereby created the Arkansas Military War Veterans Monument Design Selection Committee. The design selection committee shall consist of six (6) members designated as follows:

(A) Five (5) members shall be Arkansas military war veterans from a war or conflict in this century and selected by the Secretary of State. He or she shall select at least one (1) member each represent-

ing the military war veterans of World War II, the Korean War, the Vietnam War, and the War in the Persian Gulf.

(B) One (1) member shall be the Secretary of State or his or her designee.

(2) The design selection committee shall meet at such times as it shall determine to be necessary to select a design and site for the Arkansas Military War Veterans Monument. The monument shall be of such size and design to provide for a specific place of honor for the Arkansas war veterans of each of the specific Twentieth Century conflicts.

(3) The design and site selection shall be subject to the approval of the Capitol Zoning District Commission created under § 22-3-301 et seq.

(4) The Secretary of State is hereby authorized to accept gifts, grants, and donations from individuals and organizations, to be deposited as trust funds in the Arkansas Military War Veterans Monument Fund which is hereby created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State. All funds deposited into the Arkansas Military War Veterans Monument Fund shall be used exclusively for the purpose of constructing and erecting a monument in the memory and recognition of the military war veterans of the State of Arkansas.

History. Acts 1991, No. 1159, §§ 1-4.

A.C.R.C. Notes. This section was formerly codified as §§ 22-3-601 — 22-3-604.

22-3-220. Smoking in State Capitol Building prohibited.

Any person smoking any cigarette, cigar, pipe, or other tobacco product in the State Capitol Building shall be guilty of a misdemeanor punishable by a fine of twenty-five dollars (\$25.00).

History. Acts 1997, No. 1323, § 1; 2000 (Ex. Sess.), No. 3, § 1.

Amendments. The 2000 amendment substituted “the State Capitol Building” for “the rotunda of the State Capitol

Building or in the Governor’s Conference Room, the Old Supreme Court Room, or the cafeteria in the State Capitol Building”.

SUBCHAPTER 3 — CAPITOL ZONING DISTRICT

SECTION.

22-3-301. Construction.

22-3-302. Purpose — Creation.

22-3-303. Capitol Zoning District Commission.

22-3-304. Zoning authority of Capitol Zoning District Commission.

22-3-305. Master plan.

22-3-306. Authority of Capitol Zoning District Commission over

SECTION.

property within Capitol Zoning District — Permits.

22-3-307. Adoption of rules and regulations by Capitol Zoning District Commission.

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22-3-312. Sale of property within Capitol Zoning District — Notice.

22-3-313. Capitol Zoning District Commission — Powers.

A.C.R.C. Notes. References to “this subchapter” in §§ 22-3-301 — 22-3-312 may not apply to § 22-3-313 which was enacted subsequently.

Effective Dates. Acts 1975, No. 267, § 13: Feb. 25, 1975. Emergency clause provided: “The General Assembly hereby finds and declares that there is an urgent need to establish coordinated physical development in the Capitol area and to promote the uniform and appropriate regulation of this area. For the purpose of immediately developing a comprehensive master zoning plan the provisions of this act are necessary. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall be effective from and after its passage and approval.”

Acts 1993, No. 1223, § 21: July 1, 1993. Emergency clause provided: “It is hereby found and determined by the Seventy-Ninth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards

and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1997, No. 262, § 5: Feb. 25, 1997. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the authority to hire the director and professional staff of the Capital Zoning District Commission is more germane to the Capital Zoning District Commission than Arkansas State Building Services; the present law vests that authority in State Building Services; that the efficient administration of government requires that the authority be transferred to the Capitol Zoning District Commission as soon as possible so that authority will be vested in the commission if necessary prior to the expiration of ninety (90) days after this regular session. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by

the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1997, No. 1350, § 48: became law without the Governor’s signature. Noted Apr. 15, 1997. Emergency clause provided: “It is hereby found and determined by the Eighty-first General Assembly, that the appropriation and money provided in herein for the School for Mathematics and Sciences, College Station Community Center (Section 31) and the ability for the Department of Higher Education to carry forward balances (Section 30) must be made available during the current fiscal year. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation

of the public peace, health and safety, Sections 38 and 39 of this Act (Math and Science Supplemental Appropriation and Funding), Section 30 (Higher Education Carryforward) and Section 31 (College Station Community Center) shall be in full force and effect from and after the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, those sections shall become effective on the expiration date of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, those sections shall become effective on the date the last house override the veto. The remaining sections of this Act shall become effective from and after July 1, 1997.”

22-3-301. Construction.

(a) This subchapter shall be construed liberally. The enumeration of any object, purpose, method, manner, power, or thing shall not be deemed to exclude like or similar objects, purposes, methods, manners, powers, or things.

(b) This subchapter shall be the complete and sole authority for the accomplishment of the purpose of the subchapter.

History. Acts 1975, No. 267, §§ 11, 12; A.S.A. 1947, §§ 5-244, 5-244n.

22-3-302. Purpose — Creation.

(a) To promote the general welfare of the state with respect to the State Capitol and to promote the general welfare of the property owners of the area as described in this subchapter, an improvement and comprehensive community zoning district, to be called the Capitol Zoning District, is created, which district shall embrace all that portion of land situated in Little Rock, Pulaski County, State of Arkansas, within the following described boundaries: Beginning at the point where the centerline of 10th Street intersects the eastern edge of the right-of-way of the Missouri Pacific and Rock Island Railroad Line, thence northeast along the southern boundary of that right-of-way to the point where the centerline of Cross Street, extended northeast, intersects that right-of-way, thence south along the centerline of Cross Street to the point where that line intersects the northern edge of the Wilbur Mills Freeway (I-630), surveyed by the Arkansas State Highway and Transportation Department, thence westward along the northern edge of the Wilbur Mills Freeway (I-630), as surveyed by the Arkansas State Highway and Transportation Department, to the point of the beginning.

(b)(1) In addition to the area described in subsection (a) of this section, the Capitol Zoning District also shall include an area surrounding the Governor's Mansion, which is located at 18th and Center Streets in the City of Little Rock, Pulaski County, Arkansas, within the following described boundaries: Beginning at a point on the southwestern corner of 13th and Cumberland Streets, in the City of Little Rock, Pulaski County, Arkansas, proceeding south along the western side of Cumberland Street to the northwest corner of 16th and Cumberland Streets, and then proceeding west along the northern boundary of 16th Street to a point where the centerline of the alleyway between Scott and Cumberland Streets, extended northward, intersects that northern boundary, thence, south along the centerline of the alleyway, or an imaginary line bisecting the blocks between Cumberland and Scott Streets, to the southern boundary of 22nd Street, and thence west along that southern boundary to a point where an imaginary line bisecting the block between Scott and Main Streets intersects that southern boundary, thence south along that imaginary line to a point where the centerline of Roosevelt Road extended eastward intersects that imaginary line, then west along the centerline of Roosevelt Road to the centerline of Chester Street, thence north along the centerline of Chester Street to the centerline of 20th Street, thence east along the centerline of 20th Street, to a point where the centerline of the alleyway between Gaines and State Streets intersects the centerline of 20th Street, thence north along the centerline of the alleyway, or an imaginary line bisecting the blocks between Gaines and State Streets, to a point where that centerline intersects the southern boundary of 13th Street, thence east along the southern boundary of 13th Street to the point of the beginning.

(2) In addition, the Capitol Zoning District may in the future be further extended by a two-thirds vote of the Capitol Zoning District Commission to include the area in the following described boundaries: Beginning at the centerline of Chester Street where it intersects with the centerline of 20th Street proceeding north along the centerline of Chester Street to I-630; thence east along the southern boundary of I-630 to the intersection of the centerline of Commerce Street; thence south along the centerline of Commerce Street to a point where it intersects the centerline of 24th Street; thence east along the centerline of 24th Street to I-30; thence south along the western boundary of I-30 to the intersection of the centerline of Roosevelt Road; and thence west along the centerline of Roosevelt Road to the point of intersection with the imaginary line that bisects the block between Scott and Main Streets.

History. Acts 1975, No. 267, § 2; 1979, No. 917, § 2; A.S.A. 1947, § 5-236; Acts 2001, No. 1798, § 1.

Amendments. The 2001 amendment, in (b)(1), substituted "also shall include,"

for "shall also include," substituted "Roosevelt Road" for "23rd Street," inserted "to the centerline ... of 20th Street," and substituted "20th" for "23rd"; and added (b)(2) and made related changes.

22-3-303. Capitol Zoning District Commission.

(a) There is created and established at the seat of government a commission to be known as the Capitol Zoning District Commission.

(b) The commission shall have nine (9) members, as follows:

(1) The Governor, or his or her designee, who shall be chair;

(2) The Secretary of State, or his or her designee;

(3) Four (4) resident electors of this state, to be designated by the Governor and who shall serve three-year terms, one (1) of whom shall be a black;

(4) The Director of the City Planning staff of the City of Little Rock, or his or her designee;

(5) One (1) resident elector of this state who shall be a resident of and an owner of property within the Governor's Mansion area of the Capitol Zoning District, to be designated by the Governor, and who shall serve a three-year term; and

(6) One (1) resident elector of this state who shall be an owner of property or the designee of an owner of property within the State Capitol area of the Capitol Zoning District, to be designated by the Governor, and who shall serve a three-year term.

(c) The Director of the Capitol Zoning District Commission shall serve as the disbursing officer for the commission.

(d) Members of the commission shall receive no pay for their services, but may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(e)(1) The commission is authorized to employ a director and such other staff as the commission deems appropriate and within legislative appropriation.

(2) The commission shall have the authority to enter into contracts of any lawful nature, and to do any and all acts necessary to effect the purposes of this subchapter.

History. Acts 1975, No. 267, § 1; 1979, No. 917, § 1; A.S.A. 1947, § 5-235; Acts 1989, No. 787, § 1; 1993, No. 1223, § 5; 1993, No. 1265, § 1; 1997, No. 250, § 215; 1997, No. 262, § 1; 1997, No. 1350, § 37; 1999, No. 1508, § 7.

Amendments. The 1999 amendment repealed the version of this section as amended by Acts 1997, No. 262.

Cross References. Travel regulations, promulgation, § 19-4-901.

22-3-304. Zoning authority of Capitol Zoning District Commission.

The Capitol Zoning District Commission is authorized broad scope in its zoning authority to include, but not be limited to, the following:

(1) Restrictions on the height, number of stories, and size of buildings;

(2) Percentage of lots that may be occupied;

(3) Use of structures and land;

(4) Population density;

(5) Amount of open space;

(6) Parking areas; and

(7) Restriction of noisy and polluting processes or those endangering the health and safety of the citizens of the zoning district.

History. Acts 1975, No. 267, § 8;
A.S.A. 1947, § 5-242.

22-3-305. Master plan.

(a) The Capitol Zoning District Commission, using professional and technical assistance as it deems necessary, shall make, adopt, maintain, and revise, from time to time, an official master comprehensive plan for the Capitol Zoning District for the purpose of bringing about coordinated physical development in accordance with the present and future needs of the district.

(b) The master plan will be developed so as to preserve the dignity of the Capitol Building and Governor's Mansion, ensure efficient expenditure of public funds, and promote the safety, convenience, and general well-being of the district's inhabitants and property owners.

(c) The master plan should include, among other things, regulations relative to the location and character of roads and other transportation routes, utility services, parks, buildings, and other construction within the district.

(d) The commission may adopt the plan in whole or in part and may subsequently amend the adopted plan in whole or in part.

(e) After the adoption of the master comprehensive plan, the commission shall file a copy with the office of the Secretary of State for the inspection of the public.

History. Acts 1975, No. 267, § 3;
A.S.A. 1947, § 5-237.

22-3-306. Authority of Capitol Zoning District Commission over property within Capitol Zoning District — Permits.

(a) After the adoption of the comprehensive master zoning plan, the Capitol Zoning District Commission shall have exclusive authority over the zoning and regulation of the utilization of all property within the Capitol Zoning District, and no planning or zoning authority or jurisdiction of any subdivision of the state shall have any zoning or control authority except as agreed upon by the commission.

(b)(1) After the adoption by the commission of the comprehensive master zoning plan, the commission shall have the authority to approve or disapprove the location and design of any improvements to be placed upon any land within the district, and no improvements shall be placed upon any land within the district unless the design and proposed location shall be approved by the commission.

(2) Such improvements shall include, but not be limited to, buildings, including additions and alterations, parking lots and facilities, and all other construction whatsoever, except that the word "improvements"

shall not include existing streets, alleys, or utilities and shall not include maintenance, service, or improvement thereof.

(c) After the adoption by the commission of the comprehensive master zoning plan, no improvement of any nature nor any change of land use shall commence within the district without a permit issued by the commission.

(d) Within the district, a legally existing use, building, or structure that exists at the time of the adoption of the plans and regulations authorized by this subchapter, but not in conformity with such plans and regulations, may be continued but shall not be extended or structurally altered without the approval of the commission.

History. Acts 1975, No. 267, § 5;
A.S.A. 1947, § 5-239.

22-3-307. Adoption of rules and regulations by Capitol Zoning District Commission.

(a) The Capitol Zoning District Commission shall have the power and authority to prescribe such rules and regulations concerning procedure before it and concerning the exercise of its functions and duties as it shall deem proper.

(b) Prior to the adoption of any zoning regulations or amendments thereto, the commission shall hold a public hearing thereon pursuant to the regulations of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1975, No. 267, § 5;
A.S.A. 1947, § 5-239.

22-3-308. Coordination by Capitol Zoning District Commission with other agencies.

(a) The Capitol Zoning District Commission is authorized and encouraged to coordinate the comprehensive master zoning plan, to the greatest extent it deems practical, with city, county, and other area planning agencies.

(b)(1) The commission may enter into agreements with the City of Little Rock providing for mutual cooperation and joint regulation within the district with respect to planning and zoning; permission to build upon or otherwise use land; the enforcement of building, safety, and health codes and inspection to ensure compliance therewith; and other matters within the jurisdiction of the commission.

(2) Such agreements between the City of Little Rock and the commission may not cede the commission's final authority and responsibility over the matters entrusted to it by law.

History. Acts 1975, No. 267, § 4;
A.S.A. 1947, § 5-238.

22-3-309. Capitol Zoning District Commission's power to institute and defend legal actions.

(a) The Capitol Zoning District Commission shall constitute a body corporate for purposes of instituting and defending litigation to enforce its rules, regulations, decisions, and orders; and it may, in its name, institute or defend actions in its own behalf, or in behalf of the owner or owners of any property within the district, to enjoin any breach or violation thereof.

(b) No bond shall be required of the commission in any action for the issuance of any temporary or permanent order, or on an appeal.

(c) The Attorney General shall be the legal adviser to the commission in the same capacity as he or she is to other boards and commissions.

History. Acts 1975, No. 267, § 6;
A.S.A. 1947, § 5-240.

22-3-310. Appeal of Capitol Zoning District Commission action.

(a) Any person aggrieved by any rule, regulation, decision, or order of the Capitol Zoning District Commission may appeal the action to the Circuit Court of Pulaski County.

(b) The filing of an appeal shall in no respect suspend the operation of any rule, regulation, decision, or order, nor shall the circuit court order any suspension without a full hearing.

History. Acts 1975, No. 267, § 7;
A.S.A. 1947, § 5-241.

22-3-311. Report by Capitol Zoning District Commission to Legislative Council.

The Capitol Zoning District Commission shall submit a written summary of its actions and progress to the Legislative Council as requested by that council.

History. Acts 1975, No. 267, § 9;
A.S.A. 1947, § 5-243.

22-3-312. Sale of property within Capitol Zoning District — Notice.

(a) A person who sells real property within the Capitol Zoning District shall notify the purchaser that the real property is within the district and shall provide the purchaser with a summary of the Capitol Zoning District Commission's restrictions on property in the district and the duties and responsibilities of owners of property in the district.

(b) The summary required by this section shall be prepared by the commission.

History. Acts 1993, No. 1265, § 2.

22-3-313. Capitol Zoning District Commission — Powers.

(a) Effective July 1, 1997, the Director of the Department of Finance and Administration, as Chief Fiscal Officer of the State, shall transfer all authority and responsibility of the Arkansas Building Authority and the Director of the Arkansas Building Authority with respect to the Capitol Zoning District Commission to the Capitol Zoning District Commission and to the Director of the Capitol Zoning District Commission.

(b) The commission and its staff shall be a separate and distinct agency of government.

History. Acts 1997, No. 1350, § 35.

A.C.R.C. Notes. References to “this subchapter” in §§ 22-3-301 — 22-3-312

may not apply to this section which was enacted subsequently.

SUBCHAPTER 4 — CAPITOL PARKING CONTROL**SECTION.**

22-3-401. Purpose.

22-3-402. Definition.

22-3-403. Penalty.

22-3-404. Enforcement.

22-3-405. Capitol Parking Control Committee — Creation — Members — Meetings.

SECTION.

22-3-406. Capitol Parking Control Committee — Powers and duties.

22-3-407. Additional parking areas.

22-3-408. Information on motor vehicles of state employees.

Effective Dates. Acts 1989, No. 468, § 7: Mar. 10, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that under the present laws protection of the State Capitol grounds is inadequate; that this act is designed to maintain proper order and decorum, prevent unlawful assemblies, exclude and eject persons detrimental to the well-being of the State Capitol

grounds and regulate the operation and parking of motor vehicles in the Capitol Zoning District and that this law should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

22-3-401. Purpose.

(a) The purpose of this subchapter is to establish a system of traffic control and parking regulations governing the drives and parking areas on the State Capitol grounds and other drives and parking areas in the custody of or leased by the Secretary of State or the Arkansas Building Authority.

(b) In enacting this subchapter, the General Assembly is cognizant of the fact that increased traffic and crowded parking conditions on the State Capitol grounds make it imperative that a system of traffic and parking control be established in order that it might be more convenient for the public to have access to the agencies of government located on

the State Capitol grounds and to other buildings in the custody of or leased by the Secretary of State or the authority.

History. Acts 1983, No. 721, § 1;
A.S.A. 1947, § 5-249.

22-3-402. Definition.

As used in this subchapter, the term "State Capitol grounds" means all property owned by the State of Arkansas within the Capitol Zoning District as defined in § 22-3-302.

History. Acts 1983, No. 721, § 2;
A.S.A. 1947, § 5-250.

22-3-403. Penalty.

(a) Any person, including an employee of the State of Arkansas, found guilty of violating the provisions of this subchapter or the traffic and parking rules and regulations of the Capitol Parking Control Committee shall be guilty of a misdemeanor and upon conviction shall be fined in an amount of not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00).

(b) All fines which may be collected on account of violation of this subchapter shall be paid into the State Treasury and placed to the credit of the State Capitol Police.

History. Acts 1983, No. 721, § 7;
A.S.A. 1947, § 5-255; Acts 1989, No. 468,
§ 2.

22-3-404. Enforcement.

(a) In order that the provisions of this subchapter might be enforced, the Director of the Department of Arkansas State Police may assign one (1) state police officer or more to the State Capitol and its grounds, which may include assignments for sessions of the General Assembly, and the Secretary of State is directed to assign one (1) State Capitol Police officer or more. It shall be the responsibility of the Secretary of State to assure that at least one (1) certified law enforcement officer is on duty on the State Capitol grounds twenty-four (24) hours per day, seven (7) days per week.

(b) Each State Capitol Police officer so assigned is authorized to issue, upon determining a violation, a uniform traffic citation that shall be returnable in the Pulaski County District Court.

History. Acts 1983, No. 721, § 6; A.S.A. 1947, § 5-254; Acts 1989, No. 468, § 3;
2001, No. 1697, § 19.

Amendments. The 2001 amendment rewrote this section.

22-3-405. Capitol Parking Control Committee — Creation — Members — Meetings.

(a) There is created a committee to be known as the Capitol Parking Control Committee, hereinafter referred to as “the committee”, which shall have the powers and duties provided in § 22-3-406.

(b) The committee shall be composed of three (3) members, as follows:

(1) The Secretary of State or a designee;

(2) The Director of the Arkansas Building Authority or a designee; and

(3) A state employee designated by the Secretary of State who is employed on the State Capitol grounds in a position of administrator or higher by an agency or office other than that of the Secretary of State or of the authority.

(c) The Secretary of State shall be the chair of the committee, and the Director of the Arkansas Building Authority shall serve as secretary.

(d) Members of the committee shall serve without additional pay or compensation.

(e) Meetings of the committee shall be held at such times and places as shall be directed by the chair or upon the petition of two (2) members of the committee.

History. Acts 1983, No. 721, § 3; A.S.A. 1947, § 5-251; Acts 2003, No. 364, § 14.

Amendments. The 2003 amendment inserted “or a designee” in (b)(1); substi-

tuted “Arkansas Building Authority or a designee” for “State Building Services” in (b)(2); and substituted “authority” for “State Building Services” in (b)(3).

22-3-406. Capitol Parking Control Committee — Powers and duties.

Upon the passage of this subchapter, the Capitol Parking Control Committee shall proceed to study the traffic conditions on the drives of the State Capitol grounds and shall make a study of the existing and anticipated needs for parking space on the State Capitol grounds and other parking lots and drives leased by or in the custody of the Secretary of State or the Arkansas Building Authority. Upon completion of the study, the committee shall establish rules and regulations and shall amend or change them from time to time as deemed necessary in the following manner:

(1) Establish maximum speed limits for motor vehicles traveling upon the regulated streets and drives;

(2) Direct the flow of traffic on the regulated streets and drives;

(3) Prohibit the parking, during normal business hours, of motor vehicles on the regulated streets and drives;

(4) Establish or assign parking spaces that shall be available for use as designated by the various offices or persons working in the State Capitol Building or in any of the other buildings on the State Capitol grounds and regulate parking by elected officials in the spaces set aside for that purpose; and

(5) Do all other things reasonable and necessary to properly regulate and control the flow of traffic on the State Capitol grounds and to provide parking facilities for use by the public on the grounds.

History. Acts 1983, No. 721, § 4; 1983, No. 721, was signed by the Governor on March 23, 1983, and took effect on July 4, 1983.
A.S.A. 1947, § 5-252.

Publisher's Notes. In reference to the term "passage of this subchapter," Acts

22-3-407. Additional parking areas.

(a) In order to provide additional parking facilities on the State Capitol grounds, the Capitol Parking Control Committee is authorized and directed to study the needs for additional parking space and shall designate one (1) or more areas to be developed as appropriate parking areas.

(b) Additional parking areas shall be of sufficient size to accommodate a minimum of forty (40) motor vehicles and shall be of such larger size as the committee may deem necessary for adequate parking on the State Capitol grounds.

(c) Upon designating an area to be developed as a parking area on the State Capitol grounds, the committee shall certify the area designation to the State Highway Commission.

(d) Upon receiving the certification, the commission shall proceed to prepare necessary plans and specifications for the parking area and shall let a contract for the work and pay for the work out of the Arkansas State Highway and Transportation Department construction funds or shall perform the work out of the department maintenance appropriation.

History. Acts 1983, No. 721, § 8;
A.S.A. 1947, § 5-256.

22-3-408. Information on motor vehicles of state employees.

Upon forms prescribed by the Capitol Parking Control Committee, each administrative head of the departments and agencies of state government located in the State Capitol Building and upon the State Capitol grounds shall annually obtain information from each of his or her respective employees as to the make, model, and current license number of the motor vehicles owned by the employees and shall furnish the information to the secretary of the committee at such times as directed by the committee.

History. Acts 1983, No. 721, § 5;
A.S.A. 1947, § 5-253.

SUBCHAPTER 5 — CAPITOL ARTS AND GROUNDS COMMISSION

SECTION.

22-3-501. Definitions.

22-3-502. Creation — Members, etc.

22-3-503. Powers and duties.

SECTION.

22-3-504. Requests — Contents, hearings, etc.

Effective Dates. Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1354, § 51: Apr. 14, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act affects the method of selection of alternate members of the Legislative Council and Legislative Joint Auditing Committee and that this act is immediately necessary for proper continuity and efficiency in State government. Therefore an emergency is declared to exist and this act being immediately necessary for the pres-

ervation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor [sic], it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1508, § 19: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that this act makes various technical corrections in the Arkansas Code; that this act further clarifies the law to provide that the Arkansas Code Revision Commission may correct errors resulting from enactments of prior sessions; and that this act should go into effect immediately in order to be applicable during the codification process of the enactments of this regular session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

22-3-501. Definitions.

As used in this subchapter:

(1) "Project" means expenditures for capital construction or for capital improvements, including landscaping on the State Capitol grounds, but shall not include:

(A) Renovations, improvements, or remodeling within the interior of structures now existing on the State Capitol grounds;

(B) Repair or maintenance that does not substantially change the existing use of space on the State Capitol grounds, that does not add additional square footage to existing buildings or facilities, and that does not change exterior building design; or

(C) Individual plantings within an established landscaping plan that do not alter the overall plan concept;

(2) "Project" or "capital improvement project" shall mean and include:

(A) The location of new buildings and facilities on the State Capitol grounds;

(B) The expansion of or addition to existing buildings and facilities located on the State Capitol grounds;

(C) The location or relocation of parking lots and parking facilities on the State Capitol grounds;

(D) The location of memorials, fountains, monuments, sculpture, and other works of art, including proposals for the relocation of any fountains, memorials, or monuments and similar facilities on the State Capitol grounds;

(E) The installation of lights and lighting equipment on the State Capitol grounds;

(F) The location and development of streets, curbs, gutters, and sidewalks on the State Capitol grounds; and

(G) Landscaping projects or changes in landscaping design on the State Capitol grounds involving an expenditure in labor and material over one thousand dollars (\$1,000);

(3) "State agency" means any state board, commission, department, or any division thereof authorized by law to engage in capital construction or improvement projects on the State Capitol grounds; and

(4)(A) "State Capitol grounds" means all land, parking areas, and streets which are under the jurisdiction of the Secretary of State.

(B) This shall include the land, parking areas, and streets surrounding the State Capitol Building, the Capitol Hill Building, the Grounds Operations shop, and other land that is maintained by the Secretary of State.

History. Acts 1987, No. 665, §§ 3, 5;
1997, No. 1043, § 1.

22-3-502. Creation — Members, etc.

(a)(1) There is created a Capitol Arts and Grounds Commission.

(2) The commission shall be composed of fifteen (15) members as follows:

(A) The Governor or a designee;

(B) The Secretary of State or a designee who shall serve as the commission chair and an ex officio member;

(C) The Director of the Arkansas Historic Preservation Program;

(D) The Director of the Department of Parks and Tourism;

(E) The Chair of the Capitol Zoning District Commission;

(F) One (1) landscape architect in this state, to be named by the Secretary of State from a list of three (3) names submitted to him or her by the Arkansas Chapter of the American Society of Landscape Architects;

(G) One (1) licensed architect in this state, to be named by the Secretary of State from a list of three (3) names submitted to him or her by the Arkansas Chapter of the American Institute of Architects;

(H) Two (2) citizen members at large, to be appointed by the Governor, who shall serve four-year terms;

(I) Four (4) citizen members at large, to be appointed by the Secretary of State, who shall serve four-year terms; and

(J) The President Pro Tempore of the Senate shall appoint one (1) nonlegislator to serve at his or her pleasure as a member of the commission, and the Speaker of the House of Representatives shall appoint one (1) nonlegislator to serve at his or her pleasure as a member of the commission.

(b) Members of the commission shall serve without pay, but they shall be reimbursed by Secretary of State funds for reasonable and necessary expenses in attending commission meetings and in the performance of duties of the commission if funds are provided for the reimbursement in accordance with the rate prescribed for state employees in state travel regulations.

(c)(1) The commission shall meet at least two (2) times a year or on the call of the chair or upon written request by any four (4) of its members.

(2) A majority vote of the voting members of the commission shall be necessary for the adoption of any action by the commission.

(d)(1) The terms of office of the members of the commission appointed by the Governor and the Secretary of State shall be four (4) years.

(2)(A)(i) Within ninety (90) days prior to the expiration of the term of office of each professional member, the American Society of Landscape Architects may submit to the Secretary of State a list of three (3) names of licensed landscape architects for each position for which a term expires.

(ii) Within ninety (90) days prior to the expiration of the term of office of each professional member, the American Institute of Architects may submit to the Secretary of State a list of three (3) names of licensed architects for each position for which a term expires.

(B) Appointments expire June 30.

History. Acts 1987, No. 665, §§ 1, 2; 1997, No. 250, § 216; 1997, No. 1043, § 2; 1997, No. 1354, § 40; 1999, No. 1264, §§ 1, 2; 1999, No. 1508, § 7; 2001, No. 1288, §§ 20, 21.

Publisher's Notes. Acts 1987, No. 665, § 2, provided, in part, that the appointive members shall be designated by the Governor so that the term of one member will

expire on January 15, 1989, and the term of the other shall terminate on January 15, 1991, and their successors shall be appointed for terms of four years.

This section may be affected by the enactment of Acts 1995, No. 1211, codified as § 25-16-901 et seq.

Amendments. The 1999 amendment by No. 1264 repealed the version of this

section as amended by Acts 1997, No. 250; and rewrote this section.

The 1999 amendment by No. 1508 repealed the version of this section as amended by Acts 1997, No. 250.

The 2001 amendment inserted "to serve

at his or her pleasure" following "nonlegislator" throughout (a)(2)(J) and made minor punctuation changes; and, in (d)(1), deleted "six (6) appointive" preceding "members" and inserted "appointed ... State" following "commission."

22-3-503. Powers and duties.

(a) The Capitol Arts and Grounds Commission shall have the following powers and duties:

(1) To obtain and maintain information from state agencies concerning their current and anticipated future needs for space on the State Capitol grounds for the location of projects, as defined in § 22-3-501, to be developed by the agencies;

(2) To recommend a Capitol Master Plan for capital improvement projects on the State Capitol grounds and to review the plan from time to time to keep it up to date;

(3) To recommend the acquisition of land for such expansion of the State Capitol grounds as may be required to meet the needs of state agencies;

(4) To file an annual report with the Secretary of State;

(5) To review and recommend to the Secretary of State on the location of monuments, memorials, fountains, and similar improvements on the State Capitol grounds or for the relocation of existing monuments, memorials, and fountains on the State Capitol grounds;

(6) To review any permanent statue, statuary, fountain, monument, or memorial tablet to be erected in the public areas of the State Capitol Building or on its grounds for compliance with the adopted plan; and

(7) To review all permanent paintings or permanent mural decorations or other permanent ornaments to be placed in the public areas of the State Capitol Building.

(b) The commission shall have the right to accept donations in money, pictures, paintings, statuary fountains, and memorial tablets on behalf of the state for the State Capitol Building. In cases of money donations, the commission shall have the right to expend the money in decorations, either in the building or on the grounds thereof. To that end, the commission may make all necessary contracts for the expenditure of the funds.

(c) Upon adoption of the plan, the Secretary of State shall file one (1) copy for public display and file one (1) copy with the Joint Legislative Facilities Committee.

(d) Any monument on the State Capitol grounds as approved by the commission must be authorized by an act of the General Assembly.

History. Acts 1987, No. 665, § 4; 1989, No. 880, § 1; 1997, No. 1043, § 3.

22-3-504. Requests — Contents, hearings, etc.

(a) Before any state agency shall undertake a capital improvement project, as defined in § 22-3-501, on the State Capitol grounds, a request shall be filed with the Capitol Grounds Commission for its review of the proposed project.

(b) The Capitol Grounds Commission may require that the requests include:

(1) Architectural and landscaping plans, if appropriate, for the project;

(2) Sufficient information to demonstrate compliance with applicable standards for development;

(3) Sufficient information to demonstrate compliance with the Capitol Master Plan;

(4) Sufficient information to demonstrate consistency of the project with zoning regulations of the Capitol Zoning District Commission.

(c) Upon receipt of a request for review of a project, the Capitol Grounds Commission shall hold a public meeting for the purpose of obtaining the views of the public on the proposed project. Notices of meetings shall be mailed to interested persons, either by separate notice or by inclusion on the Capitol Grounds Commission's meeting agenda, at least ten (10) days in advance of the meeting.

(d) If, upon review of the request for review of the project, the Capitol Grounds Commission believes that more information relating to the project is required, the Capitol Grounds Commission may postpone action on the request and may ask the requesting agency or the Capitol Grounds Commission staff to provide additional information.

(e) If the Capitol Grounds Commission determines that the proposed project is consistent with the Capitol Master Plan and with Capitol Zoning District Commission regulations and is in the best interest of the use of space on the State Capitol grounds, the Capitol Grounds Commission may give favorable advice.

(f) No state agency shall undertake a capital improvement project, as defined in § 22-3-501, on the State Capitol grounds unless the project is first submitted to and approved by the General Assembly.

History. Acts 1987, No. 665, § 6; 1989, No. 880, § 2; 1997, No. 1043, § 4.

SUBCHAPTER 6 — TWENTIETH CENTURY WAR VETERANS MONUMENT**SECTION.**

22-3-601 — 22-3-604. [Transferred.]

22-3-601 — 22-3-604. [Transferred.]

A.C.R.C. Notes. This subchapter has been renumbered as § 22-3-219.

SUBCHAPTER 7

[Reserved]

SUBCHAPTER 8 — GOVERNOR'S MANSION

SECTION.

- 22-3-801. State to provide mansion.
 22-3-802. Maintenance — Use of appropriations.
 22-3-803. Payrolls, purchase of equipment, and major repairs.
 22-3-804. Arkansas Governor's Mansion Commission — Creation,

SECTION.

- members, and proceedings.
 22-3-805. Arkansas Governor's Mansion Commission — Powers and duties.
 22-3-806. Mansion Advisory Council.

Preambles. Acts 1953, No. 289, contained a preamble which read: "Whereas, by reason of his position as Chief Executive of the State, it is necessary for the Governor to use the Governor's Mansion as a place of residence and entertainment for visiting dignitaries from without the state; and

"Whereas, it is often necessary for the Governor to spend relatively large sums of money in the purchase of food for such dignitaries and public officials and others who are called upon to assist in providing entertainment; and

"Whereas, the General Assembly has adopted the policy through the enactment of appropriation measures to provide for the maintenance of the Mansion and the Mansion Grounds; and

"Whereas, it appears that the best interests of the state will be served by providing that the maintenance appropriation for the Governor's Mansion be withdrawn by the Governor in equal monthly installments to be used by him for the payment of all expenses of upkeep of the Governor's Mansion and Grounds; "Now therefore..."

Effective Dates. Acts 1883, No. 128, § 5: effective on passage.

Acts 1953, No. 289, § 3: approved Mar. 11, 1953. Emergency clause provided: "Because of the unusually large amount of expense involved and the short time within which the Governor had to prepare for the inauguration, and due to the pressure of business as a result of the convening of the General Assembly, it has been impossible for the Governor to account for all items of expense in the operation of the

Governor's Mansion, and for such reasons the Governor shall withdraw from the maintenance appropriation account the proportionate monthly allotment, effective as of January 13, 1953, taking into consideration, however, all vouchers heretofore issued. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in full force from and after its passage."

Acts 1973, No. 203, § 7: Mar. 2, 1973; Acts 1973, No. 400, § 7: Mar. 20, 1973. Emergency clauses provided: "The General Assembly finds that the Governor's Mansion is in immediate need of repair and renovation, and that the immediate assistance of the Commission created hereby is necessary in aid of such improvements. Accordingly, an emergency is declared to exist, and this act, being necessary for the public peace, health, and safety, shall be effective immediately upon its passage and approval."

Acts 1992 (2nd Ex. Sess.), No. 1, § 6: Dec. 18, 1992. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly meeting in Second Extraordinary Session, that the Governor of the State of Arkansas has been elected to serve as President of the United States of America and will be sworn into that office on January 20, 1993; and that the State Supreme Court has determined the lawful succession to fill the office of Governor when it is vacant; and that the urgent problems confronting the State require the prompt and orderly implementation of this succession (which

does not involve the habitation of the Mansion); and that his continued residence in the Governor's Mansion is necessary to provide for a smooth and effective transition between governors. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for

board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

22-3-801. State to provide mansion.

(a) The State of Arkansas shall furnish to its governors a mansion in which to reside during their respective terms of office.

(b) With the approval of the Governor, a former Governor may reside in the mansion for a period not exceeding forty-five (45) days after the date on which he or she ceases to be Governor.

(c) With the approval of the Governor, a Governor-elect may reside in the mansion for a period not exceeding forty-five (45) days before the date on which he or she becomes Governor.

History. Acts 1883, No. 128, § 1, p. 310; C. & M. Dig., § 4388; Pope's Dig., § 5403; A.S.A. 1947, § 12-303; Acts 1992

(2nd Ex. Sess.), No. 1, § 1.

Cross References. Security for mansion and grounds, § 12-8-108.

22-3-802. Maintenance — Use of appropriations.

(a) Of the amounts from time to time appropriated by the General Assembly for the maintenance of the Governor's Mansion, a lump sum monthly installment of one-twelfth ($\frac{1}{12}$) of the annual appropriation is authorized to be withdrawn by the disbursing officer of the Arkansas Governor's Mansion Commission to be used by him or her for the payment of all expenses incurred in the operation of the mansion, including the purchase of food and all miscellaneous items of a minor nature, and the expenditure of the funds so withdrawn shall not be subject to the purchasing laws or the laws relating to either the preaudit or postaudit of expenditures.

(b) The disbursing officer of the commission shall file with the Legislative Council an annual summary statement of expenditures made by him or her of the maintenance funds so withdrawn, together with a statement of the adequacy of the amount of the funds for operation of the mansion and grounds.

History. Acts 1953, No. 289, § 1; A.S.A. 1947, § 12-306; Acts 1992 (2nd Ex. Sess.), No. 1, § 2.

22-3-803. Payrolls, purchase of equipment, and major repairs.

Payrolls, the purchase of equipment, and the expenses resulting from major repairs to the Governor's Mansion shall be paid upon vouchers issued in the normal course and shall be subject to applicable laws of the state as in the instance of the operation of the Governor's office.

History. Acts 1953, No. 289, § 2; A.S.A. 1947, § 12-307.

22-3-804. Arkansas Governor's Mansion Commission — Creation, members, and proceedings.

(a)(1) There is created the Arkansas Governor's Mansion Commission, hereinafter referred to as "the commission", to be composed of eight (8) members appointed by the Governor, at least one (1) of whom shall reside in each congressional district as the districts shall be established by law.

(2) The members serving on March 1, 1997, shall continue to serve the remainder of their terms.

(3) The Governor shall appoint three (3) at-large members immediately.

(b) The Governor shall designate one (1) member of the commission as chair, and the member so designated shall retain the position of chair for the duration of his or her term on the commission.

(c) At-large members of the commission shall serve at the pleasure of the Governor. Members of the commission who are not at-large members shall serve for terms of five (5) years.

(d) If a vacancy occurs by reason of resignation or otherwise, the Governor shall appoint a member to fill that vacancy for the unexpired term of the member whose position has become vacant.

(e) The members of the commission shall receive no salary or other compensation for their services except that they may receive expense reimbursement in accordance with § 25-16-901 et seq. for attending meetings of the commission.

(f) Meetings of the commission may be called by the chair or the Governor upon at least three (3) days' written notice to the other members of the commission, to the Governor, and to the members of the Mansion Advisory Council created by § 22-3-806.

(g) The commission shall meet at least once each year.

(h) The commission shall adopt such procedural or parliamentary rules for the conduct of its business as it deems proper and may from time to time amend or repeal the rules whenever it sees fit.

(i) The Director of the Department of Arkansas Heritage shall serve as an ex officio nonvoting member of the commission.

History. Acts 1973, No. 203, §§ 1-4; 313 — 12-316; Acts 1997, No. 250, § 217; 1973, No. 400, §§ 1-4; A.S.A. 1947, §§ 12- 1997, No. 1113, § 1.

22-3-805. Arkansas Governor's Mansion Commission — Powers and duties.

(a) The Arkansas Governor's Mansion Commission shall have the following powers and duties:

(1) To survey and investigate the condition of the mansion, its appurtenant buildings, its grounds, and its contents, including furniture and fixtures;

(2) To make rules and regulations governing any improvements, repairs, replacements, or reconstruction of the mansion, its appurtenant buildings, its grounds, and its contents, including furniture and fixtures;

(3) To prepare and file with the Governor and the Legislative Council an annual mansion report, to be filed on or before November 1 of each year, summarizing the results of its surveys and investigations made under subdivision (a)(1) of this section and recommending any necessary repairs, improvements, replacements, or reconstruction of the mansion, its appurtenant buildings, grounds, and contents, together with an itemized and detailed estimate of the costs thereof; and

(4)(A) To solicit and accept gifts, grants, or donations of or for the purchase of furnishings, fixtures, works of art, trees, shrubs, landscaping, and similar contents and appurtenances.

(B) However, no such gift, grant, or donation may be accepted without the approval of the commission and the Governor.

(b) Any individual, corporation, or nonprofit association may solicit funds or engage in fundraising activities on behalf of the commission upon written permission by the commission and the Governor.

History. Acts 1973, No. 203, § 5; 1973, No. 400, § 5; A.S.A. 1947, § 12-317; Acts 1997, No. 1113, § 2.

22-3-806. Mansion Advisory Council.

(a) There is created a Mansion Advisory Council, to be composed of three (3) members appointed by the President Pro Tempore of the Senate, three (3) members appointed by the Speaker of the House of Representatives, and any other persons as the Arkansas Governor's Mansion Commission or the Governor may select.

(b) The council shall assist the commission in any manner requested by the commission.

(c) Members of the council shall be notified of all meetings of the commission as provided in § 22-3-804, shall have the right to take part in all meetings of the commission, and shall have and enjoy all rights and privileges of membership on the commission except the right to vote and to receive per diem payments.

History. Acts 1973, No. 203, § 6; 1973, No. 400, § 6; A.S.A. 1947, § 12-318; Acts 2001, No. 1288, § 22.

Amendments. The 2001 amendment,

in (a), deleted “of the Senate” preceding “appointed by the President,” and deleted “of the House of Representatives” preceding “appointed by the Speaker.”

SUBCHAPTER 9 — ARKANSAS JUSTICE BUILDING

SECTION.

- 22-3-901. Title.
- 22-3-902. Definitions.
- 22-3-903. Construction.
- 22-3-904. Arkansas Justice Building Commission — Creation — Members — Meetings. [Abolished.]
- 22-3-905. Duties and powers of Arkansas Building Authority generally.
- 22-3-906. Director of Arkansas Building Authority.
- 22-3-907. Financing authority of Arkansas Building Authority.
- 22-3-908. Bonds — Issuance and terms.
- 22-3-909. Bonds — Trust indenture.
- 22-3-910. Bonds — Sale and execution.
- 22-3-911. Bonds — Pledge of revenues — Restrictions.
- 22-3-912. Bonds — Actions for enforcement.

SECTION.

- 22-3-913. Bonds — Tax exemptions.
- 22-3-914. Refunding bonds — Issuance.
- 22-3-915. Investment by Arkansas retirement systems.
- 22-3-916. Audit of accounts — Reports.
- 22-3-917. Employment of architect — Fees.
- 22-3-918. Notice for bids for construction — Bonds — Execution of contracts.
- 22-3-919. [Repealed.]
- 22-3-920. [Repealed.]
- 22-3-921. Lease to Workers' Compensation Commission.
- 22-3-922. Lease to Arkansas Public Service Commission.
- 22-3-923. Allocation of space.
- 22-3-924. Legislative intent.

A.C.R.C. Notes. References to “this subchapter” in §§ 22-3-901 — 22-3-923 may not apply to § 22-3-924 which was enacted subsequently.

Acts 1993, No. 235, § 1, provided: “The Justice Building Commission created by Arkansas Code § 22-3-904 is hereby abolished and all of its powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds are hereby transferred to the Arkansas State Building Services created by Arkansas Code § 22-2-104.”

The name of Arkansas State Building Services, created by Arkansas Code § 22-2-104, has been changed to Arkansas Building Authority.

Cross References. Justice Building Construction Fund, § 19-5-1087.

Effective Dates. Acts 1955, No. 375, § 24: approved Mar. 24, 1955. Emergency clause provided: “It has been found and it is hereby declared that the lack of adequate facilities for the expeditious and efficient conduct of the business of the

Supreme Court of the State of Arkansas, of the Attorney General, of the Public Service Commission, and of the Workmen's Compensation Commission, adversely affects the public welfare, property and resources, and it is hereby found and declared that there is an urgent and immediate need for the construction of adequate facilities for the housing of the Supreme Court, the Clerk, the Library, the Attorney General, the Public Service Commission, and the Workmen's Compensation Commission in order that the business of the same may be expeditiously and efficiently handled in the best public interest, and that adequate facilities can be made available immediately only by the constructing and financing of the Justice Building in the manner and pursuant to the provisions of this act. It is, therefore, declared that an emergency exists and this act being necessary for the preservation of the public peace, health and safety shall take effect and be in force from and after its passage.”

Acts 1973, No. 632, § 6: Apr. 9, 1973.

Emergency clause provided: "It has been found and it is hereby declared that the Arkansas Justice Building, as presently constituted, is in immediate need of reconstruction, improvement, extension and equipment, in order that agencies of the state occupying and using it may have sufficient space in which to effectively and properly carry out their operations and activities, which are essential to the welfare of the citizens and inhabitants of this state and that the immediate effect of this act is the only means by which such things can be accomplished. Therefore, an emergency is declared to exist, and this act, being immediately necessary to the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 791, § 13: Apr. 3, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that the lack of adequate space and facilities currently available to the courts, library and offices listed in section 2 has seriously affected their ability to efficiently perform their duties and responsibilities and is causing unnecessary hardship and delay in the proper administration of justice necessary to the people of this state; that the immediate alleviation of this situation is necessary to protect and provide the administration of justice in the state, and that this act is designed to accomplish this purpose. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989 (3rd Ex. Sess.), No. 64, § 8: Nov. 16, 1989. Emergency clause provided: "It is hereby found and declared that the various school district of this state may be able to effect substantial savings in total principal and interest payments by issuing refunding bonds authorized by this Act and that the authority conferred hereby should be available as soon as possible to permit more monies to be available for the use of the school districts of this state. Therefore, an emergency is declared to exist and this Act being essential for the preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

Acts 1995, No. 149, § 18: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995."

RESEARCH REFERENCES

UALR L.J. Note, Revenue Bonds—The Election Requirement: City of Hot Springs

v. Creviston, 288 Ark. 286, 705 S.W.2d 415 (1986), 9 UALR L.J. 63.

CASE NOTES

Constitutionality.

Sections 22-3-901 — 22-3-922 contain no unconstitutional delegation of legisla-

tive power. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

22-3-901. Title.

This subchapter shall be referred to and may be cited as the "Arkansas Justice Building Act".

History. Acts 1955, No. 375, § 1; A.S.A. 1947, § 5-601.

22-3-902. Definitions.

As used in this subchapter:

(1) “Arkansas Public Service Commission” means the Arkansas Public Service Commission as constituted and with the authority existing on the date of adoption of this subchapter, and at any time thereafter, and any successor commission or agency since that date or thereafter created and in existence, exercising all or any part of the functions exercised by the Arkansas Public Service Commission, including particularly and without limitation the Arkansas State Highway and Transportation Department;

(2) “Construct” or “construction” means the initial construction and equipment of the Arkansas Justice Building and any subsequent reconstruction, equipment, extension, or improvement thereof; and

(3) “Workers’ Compensation Commission” means the Workers’ Compensation Commission as constituted and with the authority existing on March 24, 1955, and at any time thereafter, and any successor commission or agency since that date or thereafter created and in existence, exercising all or any part of the functions exercised at any time by the Workers’ Compensation Commission.

History. Acts 1955, No. 375, § 22, as added by Acts 1973, No. 632, § 4; A.S.A. 1947, § 5-621.

22-3-903. Construction.

(a) This subchapter shall be liberally construed to accomplish the intent and purposes thereof and shall be the sole authority required for the accomplishment of its purposes. To this end, it shall not be necessary to comply with general provisions of other laws dealing with public facilities, their acquisition, construction, leasing, encumbering, or disposition.

(b) The enumeration of any object, purpose, power, manner, method, and thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

History. Acts 1955, No. 375, § 21; 1973, No. 632, § 3; A.S.A. 1947, § 5-620.

22-3-904. Arkansas Justice Building Commission — Creation — Members — Meetings. [Abolished.]

Publisher’s Notes. Acts 1993, No. 235, § 1 provided: “The Justice Building Commission created by Arkansas Code § 22-3-904 is hereby abolished and all of its powers, duties, functions, records, personnel, property, unexpended balances of ap-

propriations, allocations, or other funds are hereby transferred to the Arkansas State Building Services created by Arkansas Code § 22-2-104.”

The name of Arkansas State Building Services, created by Arkansas Code § 22-

2-104, has been changed to Arkansas No. 375, §§ 2-6, 8; 1963, No. 513, §§ 1-3; Building Authority. A.S.A. 1947, §§ 5-602 — 5-606, 5-608.

The section was derived from Acts 1955.

22-3-905. Duties and powers of Arkansas Building Authority generally.

It shall be the function, power, and duty of the Arkansas Building Authority to:

- (1) Equip the Arkansas Justice Building and any extensions thereof;
- (2) Have exclusive jurisdiction over the operation of the building, including, without limiting the generality of this grant, the execution of lease agreements covering the leasing of space in the building in such form, for such terms, with such provisions, for such amounts, and with such parties, including, but not limited to, state agencies, as the authority shall determine;
- (3) Purchase, lease, or rent any corporeal or personal property;
- (4) Receive bequests or donations of any real, corporeal, or personal property;
- (5) Sell, barter, lease, or rent any real, corporeal, or personal property, or convert into money any property which cannot be used in the form received;
- (6) Establish accounts in one (1) or more banks, and thereafter, from time to time, make deposits in and withdrawals from those accounts;
- (7) Contract and be contracted with; and
- (8) Take such other action, not inconsistent with law, as it may deem necessary or desirable to carry out the intent and purposes of this subchapter.

History. Acts 1955, No. 375, § 7; Arkansas Justice Building Commission to A.S.A. 1947, § 5-607.

Publisher's Notes. As to transfer of Arkansas Building Authority, see Publisher's Note at beginning of this subchapter.

22-3-906. Director of Arkansas Building Authority.

(a) The Director of the Arkansas Building Authority shall be the custodian of all property held in the name of the authority, shall be its disbursing agent and executive officer, and shall administer the provisions of this subchapter and the rules, regulations, and orders established thereunder.

(b) The authority may, by resolution duly adopted, delegate to the director any of the powers or duties vested in or imposed upon it by this subchapter. Until the resolution shall subsequently have been modified or rescinded, the delegated powers and duties may be exercised by the director in the name of the authority.

(c) The director, subject to the approval of the authority, shall employ such assistants and other personnel as are, in his or her opinion, necessary to properly administer the provisions of this subchapter.

(d)(1) The director shall furnish bond to the state, with a corporate surety thereon, in the penal sum of twenty-five thousand dollars (\$25,000), conditioned that he or she will faithfully perform his or her

duties and properly account for all funds received and disbursed by him or her.

(2) An additional disbursing agent's bond shall not be required of the director, and the bond so furnished shall be filed in the office of the Secretary of State, and an executed counterpart thereof shall be filed with the Auditor of State.

(3) The premium on the bond shall be a proper charge against the funds under the control of the authority.

History. Acts 1955, No. 375, § 9; Arkansas Justice Building Commission to A.S.A. 1947, § 5-609. Arkansas Building Authority, see Publisher's Note at beginning of this subchapter.

Publisher's Notes. As to transfer of

22-3-907. Financing authority of Arkansas Building Authority.

The Arkansas Building Authority is authorized and empowered to enter into the necessary contracts for the borrowing of all funds that it determines will be required in connection with the financing of the Arkansas Justice Building or the construction of extensions, additions, or improvements thereto. The cost of construction may include architectural, engineering, legal, and other similar expenses.

History. Acts 1955, No. 375, § 16; Arkansas Justice Building Commission to A.S.A. 1947, § 5-615. Arkansas Building Authority, see Publisher's Note at beginning of this subchapter.

Publisher's Notes. As to transfer of

22-3-908. Bonds — Issuance and terms.

(a) In evidence of loans of funds, the Arkansas Development Finance Authority is authorized and empowered to issue its bonds at one (1) time or in series from time to time, as provided in this section, and to use the proceeds thereof, together with other available funds, for defraying the costs of accomplishing the construction of the Arkansas Justice Building, together with all expenses incidental to and reasonably necessary in connection therewith, for paying the expenses of the issuance of the bonds; for the creation of a reserve for contingencies to secure the payment of the bonds, if the authority deems it necessary or desirable; and for providing for the payment of interest on the bonds, if necessary, until sufficient funds are available.

(b)(1) The bonds shall be authorized by resolution of the authority.

(2) The bonds may be issued at one (1) time or in series from time to time, and the authorizing resolution may control any priority between or among successive series or issues.

(3) The bonds:

(A) May be coupon bonds, payable to bearer, or may be registrable as to principal only or as to both principal and interest;

(B) May be in such form and denomination;

(C) May have such date or dates;

(D) May be stated to mature at such times, not exceeding forty (40) years from the date thereof;

(E) May bear interest payable at such times and at such rate or rates, provided that no bond may bear interest at a rate exceeding eight percent (8%) per annum;

(F) May be made payable at such place or places within or without the State of Arkansas;

(G) May be made subject to such terms of redemption in advance of maturity at such prices; and

(H) May contain such other terms and conditions, all as the commission shall determine.

(4) The bonds shall have all the qualities of negotiable instruments under the laws of the State of Arkansas, subject to provisions as to registration of ownership, as set forth in subdivision (3) of this subsection.

(c) The authorizing resolution may contain any other terms, covenants, and conditions that are deemed desirable, including, without limitation, those pertaining to the maintenance of various funds and reserves, the nature and extent of the security, the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the issuance of additional bonds, and the nature of the pledge and security, whether parity or priority, in that event, and the rights, duties, and obligations of the authority and of the holders and registered owners of the bonds as the authority shall determine.

History. Acts 1955, No. 375, § 16; 1973, No. 632, § 2; A.S.A. 1947, § 5-615.

Publisher's Notes. Acts 1985, No. 1062, § 24, provided in part that the authority of the Justice Building Commission to issue revenue bonds pursuant to

Acts 1955, No. 375, was transferred to the Arkansas Development Finance Authority and that from May 1, 1985, the issuer of revenue bonds pursuant to Acts 1955, No. 375 means the Arkansas Development Finance Authority.

CASE NOTES

ANALYSIS

Constitutionality.
Bondholders' rights.

Constitutionality.

Bonds authorized by this chapter are not state bonds within the meaning of Ark. Const. Amend. 20 prohibiting the issuance of bonds or other evidence of indebtedness pledging the faith and credit of the state except by consent of the electors. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

Issuance of bonds under this chapter does not amount to the state lending its credit or issuing interest-bearing treasury warrants or scrip within the meaning of Ark. Const., Art. 16, § 1. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

The Arkansas Justice Building Commission is not the State of Arkansas for the purposes of Ark. Const. Amend. 20 prohibiting the state from issuing bonds without electoral approval. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

Bondholders' Rights.

When bonds are issued by the commission, the bondholders may well acquire contractual rights under this chapter so that an attempt by a subsequent legislature to abrogate or alter the provisions in such a manner as to impair the security of the bondholders may constitute an impairment of their contractual rights. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

22-3-909. Bonds — Trust indenture.

The authorizing resolution may provide for the execution by the Arkansas Development Finance Authority with a bank or trust company within or without the State of Arkansas of a trust indenture which may contain any terms, covenants, and conditions that are deemed desirable by the authority, including, without limitation, those pertaining to the maintenance of various funds and reserves, the nature and extent of the security, the custody and application of the proceeds of the bonds, the collection and disposition of revenues, the issuance of additional bonds, and the nature of the pledge and security, whether parity or priority, in that event, and the rights, duties, and obligations of the authority, of the trustee, and of the holders and registered owners of the bonds.

History. Acts 1955, No. 375, § 16; authority to issue bonds, see Publisher's 1973, No. 632, § 2; A.S.A. 1947, § 5-615. Notes to § 22-3-908.

Publisher's Notes. As to transfer of

22-3-910. Bonds — Sale and execution.

(a)(1) The bonds shall be sold at public sale on sealed bids.

(2) Notice of the sale shall be published once a week for at least two (2) consecutive weeks in a newspaper published in the City of Little Rock, and having a general circulation throughout the State of Arkansas, with the first publication to be at least twenty (20) days prior to the date of sale.

(3) The bonds may be sold at such price as the Arkansas Development Finance Authority may accept, including sale at a discount, but in no event shall any bid be accepted which results in an interest cost to be computed by counting the amount of any discount as interest which is in excess of the interest cost computed at par for eight percent (8%) per annum bonds.

(4) The award, if made, shall be to the bidder whose bid results in the lowest net interest cost, determined by computing the aggregate interest cost at the rate bid, deducting the amount of any premium bid, then adding the amount of any discount bid.

(b)(1) The bonds shall be executed by the manual or facsimile signature of the chairman of the commission and by the manual signature of the secretary of the commission.

(2) The coupons attached to the bonds shall be executed by the facsimile signature of the chairman of the commission.

(3) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be officers before the delivery of the bonds or coupons, their signatures shall, nevertheless, be valid and sufficient for all purposes.

(4) The authority shall adopt and use a seal in the execution and issuance of the bonds, and each bond shall be sealed with the seal of the authority.

History. Acts 1955, No. 375, § 16; authority to issue bonds, see Publisher's 1973, No. 632, § 2; A.S.A. 1947, § 5-615. Notes to § 22-3-908.

Publisher's Notes. As to transfer of

CASE NOTES

Bondholder's Rights.

When bonds are issued by the commission, the bondholders may well acquire contractual rights under this chapter so that an attempt by a subsequent legislature to abrogate or alter the provisions in

such a manner as to impair the security of the bondholders may constitute an impairment of their contractual rights. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

22-3-911. Bonds — Pledge of revenues — Restrictions.

(a) The bonds and interest thereon shall be payable solely from and secured by a pledge of the gross revenues in the Justice Building Fund, which revenues are specifically declared to be cash funds, restricted in their use, and dedicated solely for the purposes set forth in this subchapter. The Arkansas Development Finance Authority is authorized and empowered to make a pledge of the gross revenues in the resolution authorizing the issuance of the bonds.

(b) The bonds shall be general obligations only of the authority, and in no event shall they constitute an indebtedness for which the faith and credit of the State of Arkansas or any of its revenues are pledged.

(c) No member of the authority shall be personally liable on the bonds, or for any damages sustained by anyone in connection with the contracts for loans or construction of the Arkansas Justice Building, unless it shall be made to appear that he or she has acted with a corrupt intent.

History. Acts 1955, No. 375, § 16; authority to issue bonds, see Publisher's A.S.A. 1947, § 5-615. Notes to § 22-3-908.

Publisher's Notes. As to transfer of

CASE NOTES

ANALYSIS

Constitutionality.
Bondholders' rights.

Constitutionality.

Issuance of bonds under this chapter does not amount to the state lending its credit or issuing interest-bearing treasury warrants or scrip within the meaning of Ark. Const., Art. 16, § 1. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

Bonds authorized by this chapter are not state bonds within the meaning of Ark. Const. Amend. 20 prohibiting the issuance of bonds or other evidence of indebtedness pledging the faith and credit

of the state except by consent of the electors. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

The Arkansas Justice Building Commission is not the State of Arkansas for the purposes of Ark. Const. Amend. 20 prohibiting the state from issuing bonds without electoral approval. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

Bondholders' Rights.

When bonds are issued by the commission, the bondholders may well acquire contractual rights under this chapter so that an attempt by a subsequent legislature to abrogate or alter the provisions in such a manner as to impair the security of

the bondholders may constitute an impairment of their contractual rights. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

22-3-912. Bonds — Actions for enforcement.

Any covenants and agreements entered into by the Arkansas Development Finance Authority shall be binding in all respects upon the authority and its successors in accordance with the terms of those covenants and agreements, and all of the provisions thereof shall be enforceable by appropriate proceedings at law or in equity or otherwise.

History. Acts 1955, No. 375, § 16; authority to issue bonds, see Publisher's A.S.A. 1947, § 5-615. Notes to § 22-3-908.

Publisher's Notes. As to transfer of

CASE NOTES

Bondholders' Rights.

When bonds are issued by the commission, the bondholders may well acquire contractual rights under this chapter so that an attempt by a subsequent legislature to abrogate or alter the provisions in

such a manner as to impair the security of the bondholders may constitute an impairment of their contractual rights. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

22-3-913. Bonds — Tax exemptions.

Bonds issued under the provisions of this subchapter shall be exempt from all taxes, state, county, and municipal. This exemption shall include income taxation and inheritance taxation.

History. Acts 1955, No. 375, § 16; A.S.A. 1947, § 5-615.

Publisher's Notes. This section was declared unconstitutional by *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428

(1955) insofar as it relates to exemption from property taxation.

As to transfer of authority to issue bonds, see Publisher's Notes to § 22-3-908.

CASE NOTES

ANALYSIS

Constitutionality.
Bondholders' rights.

Constitutionality.

This section violates Ark. Const., Art. 16, §§ 5 and 6, insofar as it exempts the bonds from property taxation. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

Invalidity of this section insofar as it relates to property taxation does not affect the validity of the remainder of Acts 1955, No. 375, in view of § 22 of that act, which declares the provisions of the act to be severable. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

Exemption of the bonds from state income and inheritance taxes is not violative of Ark. Const., Art. 16, §§ 5 and 6. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

Bondholders' Rights.

When bonds are issued by the commission, the bondholders may well acquire contractual rights under this chapter so that an attempt by a subsequent legislature to abrogate or alter the provisions in such a manner as to impair the security of the bondholders may constitute an impairment of their contractual rights. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

22-3-914. Refunding bonds — Issuance.

(a) The Arkansas Development Finance Authority may issue bonds under this subchapter for the purpose of refunding any obligation of the authority issued under this subchapter at a rate or rates of interest not exceeding the maximum rate otherwise authorized under this subchapter. The authority may authorize and deliver a single issue of bonds under this subchapter in part for the purpose of refunding such obligations and in part for the purpose of constructing extensions, additions, or improvements to the Arkansas Justice Building.

(b)(1) When bonds are issued under this section for refunding purposes, the bonds may either be sold or delivered in exchange for the outstanding obligations.

(2) If sold, the proceeds may be either applied to the payment of the obligations refunded or deposited in escrow for the retirement thereof.

(c) All bonds issued under this section shall in all respects be authorized, issued, and secured in the manner provided for other bonds issued under this subchapter and shall have all the attributes of such bonds.

(d) The authority may provide that any refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the obligations refunded thereby.

History. Acts 1955, No. 375, § 16; authority to issue bonds, see Publisher's A.S.A. 1947, § 5-615. Notes to § 22-3-908.

Publisher's Notes. As to transfer of

CASE NOTES**ANALYSIS**

Constitutionality.
Bondholders' rights.

Constitutionality.

Bonds authorized by this chapter are not state bonds within the meaning of Ark. Const. Amend. 20, prohibiting the issuance of bonds or other evidence of indebtedness pledging the faith and credit of the state except by consent of the electors. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

Issuance of bonds under this chapter does not amount to the state lending its credit or issuing interest-bearing treasury warrants or scrip within the meaning of Ark. Const., Art. 16, § 1. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

The Arkansas Justice Building Commission is not the State of Arkansas for the purposes of Ark. Const. Amend. 20, prohibiting the state from issuing bonds without electoral approval. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

Bondholders' Rights.

When bonds are issued by the commission, the bondholders may well acquire contractual rights under this chapter so than an attempt by a subsequent legislature to abrogate or alter the provisions in such a manner as to impair the security of the bondholders may constitute an impairment of their contractual rights. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

22-3-915. Investment by Arkansas retirement systems.

The board of trustees of any retirement system created by the General Assembly may, in its discretion, invest its funds in the bonds of the Arkansas Development Finance Authority issued under the provisions of this subchapter.

History. Acts 1955, No. 375, § 17; authority to issue bonds, see Publisher's A.S.A. 1947, § 5-616. Notes to § 22-3-908.

Publisher's Notes. As to transfer of

22-3-916. Audit of accounts — Reports.

The agency of the state authorized by law to audit the records and accounts of the various state agencies is authorized and directed to audit the records and accounts of the Arkansas Building Authority and to furnish a copy of the report thereof to the authority and to the trustee for the bondholders.

History. Acts 1955, No. 375, § 18; Arkansas Justice Building Commission to A.S.A. 1947, § 5-617. Arkansas Building Authority, see Publisher's

Publisher's Notes. As to transfer of er's Note at beginning of this subchapter.

22-3-917. Employment of architect — Fees.

(a)(1) The Arkansas Building Authority is authorized to employ an architect to prepare plans, specifications, and estimates of cost for the construction of the Arkansas Justice Building and to supervise and inspect the construction.

(2) The authority and the architect shall advise with the members of the Supreme Court, the Attorney General, the Workers' Compensation Commission, and the Arkansas Public Service Commission concerning the plans and specifications for the construction.

(b)(1) The fees or commissions of the architect shall not exceed six percent (6%) of the total construction cost, and none of the fees or commissions shall be due and payable until the construction contracts shall have been awarded and then only to the extent of sixty percent (60%) of the total amount of the fees or commissions.

(2) The remainder of the architect's fees or commissions shall be due and payable as the construction work progresses.

History. Acts 1955, No. 375, § 19; Arkansas Justice Building Commission to A.S.A. 1947, § 5-618. Arkansas Building Authority, see Publisher's

Publisher's Notes. As to transfer of er's Note at beginning of this subchapter.

22-3-918. Notice for bids for construction — Bonds — Execution of contracts.

(a)(1) After the Arkansas Building Authority has approved the plans and specifications prepared by the architect, it shall proceed to advertise for bids for the construction of the Arkansas Justice Building.

(2) The notice shall be published one (1) time each week for not less than three (3) consecutive weeks in one (1) or more newspapers of general circulation published in the City of Little Rock, and in such other newspapers and trade or construction journals as may, in the opinion of the authority, be desirable.

(3) The notice shall provide for the receipt of sealed bids, shall set forth the time and place at which the bids will be received, shall give the name and address of the architect from whom copies of plans, specifications, and drafts of the proposed contract to be entered into with the successful bidder may be obtained, and shall contain any other information and requirements as, in the opinion of the authority, may be necessary or desirable.

(b)(1) On the date and time fixed in the notice, the authority shall open, tabulate, and compare the bids and shall award the contract to the lowest responsible bidder.

(2) The authority shall have the right to reject any or all bids.

(c) The successful bidder shall be required to furnish bonds to the State of Arkansas for the use and benefit of the authority, with a corporate guaranty of indemnity sureties thereon. Bond shall be both for the completion of the construction free of all liens and encumbrances in an amount fixed by the authority and for the protection of the authority and its members against all liability for injury to person or damage to or loss of property arising or claimed to have arisen in the course of the construction, within limits fixed by the commission.

(d) The chairman and secretary, acting on behalf of the authority, shall execute all contracts awarded by the authority.

History. Acts 1955, No. 375, § 20; A.S.A. 1947, § 5-619.

Arkansas Justice Building Commission to Arkansas Building Authority, see Publisher's Note at beginning of this subchapter.

Publisher's Notes. As to transfer of

22-3-919. [Repealed.]

Publisher's Notes. This section, concerning the Justice Building Fund, was repealed by Acts 1993, No. 1223, § 12.

The section was derived from Acts 1955, No. 375, § 15; A.S.A. 1947, § 5-614.

22-3-920. [Repealed.]

Publisher's Notes. This section, concerning special costs assessed — remittance to commission, was repealed by Acts 1995, No. 1256, § 20, as amended by Acts 1995 (Ex. Sess.), No. 13, § 4. The section

was derived from Acts 1955, No. 375, § 14; 1973, No. 632, § 1; A.S.A. 1947, § 5-613; Acts 1989 (3rd Ex. Sess.), No. 64, § 2.

22-3-921. Lease to Workers' Compensation Commission.

(a) The Workers' Compensation Commission, or any successor commission exercising the functions now exercised by the commission, is expressly authorized, empowered, and directed to enter into and execute a lease agreement with the Arkansas Building Authority

covering the space in the Arkansas Justice Building to be utilized by the commission for such term, containing such provisions, and for such amount as the commission and the authority shall determine.

(b) The lease agreement may be executed at any time after the plans for the Arkansas Justice Building have been prepared and approved in the manner provided in this subchapter.

(c) If executed prior to completion of the Arkansas Justice Building, the lease shall provide that the commission shall not be obligated to begin the rental payments provided therein until it shall actually occupy its facilities in the Arkansas Justice Building, which occupancy shall be as soon as practicable after the completion of the Arkansas Justice Building. The lease agreement shall be effective and binding upon the parties from and after the date of its actual execution.

(d) The rental payments under the lease shall be made and handled as follows:

(1) The commission, or any successor commission exercising the functions now exercised by the commission, shall remit directly to the Secretary of the Arkansas Justice Building Commission for deposit in the Justice Building Fund the amount due on the annual rental under the lease from the moneys received directly by it from the insurance carrier fees and the premium tax levied under the Workers' Compensation Law, as amended, § 11-9-101 et seq.;

(2) If the moneys so received directly by the commission are not sufficient to pay the amount due on the annual rental, the Chair of the Workers' Compensation Commission shall certify the amount of the deficiency to the Insurance Commissioner, or any successor exercising the functions now exercised by the Insurance Commissioner. The Insurance Commissioner shall remit, from the receipts of the premium tax collected by him or her under the Workers' Compensation Law, as amended, § 11-9-101 et seq., the amount of such deficiency directly to the secretary of the commission for deposit in the Justice Building Fund;

(3) The rental payments shall be made by the commission or by the Insurance Commissioner, if there is a deficiency, from the moneys received by them prior to the deposit of the moneys in the Workers' Compensation Fund in the State Treasury; and

(4) Upon the discharge of all bonds authorized by this subchapter, rental payments shall be deposited into the Justice Building Fund and applied to the operation and maintenance of the Arkansas Justice Building, as set forth in this subchapter.

History. Acts 1955, No. 375, § 11; A.S.A. 1947, § 5-611; Acts 1989 (3rd Ex. Sess.), No. 64, § 3.

Arkansas Justice Building Commission to Arkansas Building Authority, see Publisher's Note at beginning of this subchapter.

Publisher's Notes. As to transfer of

CASE NOTES

ANALYSIS

Constitutionality.
Lease valid.

Constitutionality.

Provisions of this section authorizing rental payments by Workers' Compensation Commission out of its funds prior to payment of the funds into the State Treasury are not contrary to Ark. Const., Art. 5, § 29, or Art. 16, § 12, as the funds

involved are "cash funds" within the rule excepting such funds from the constitutional provisions. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

Lease Valid.

Long-term leasing agreement between the Workers' Compensation Commission and the Justice Building Commission was valid. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

22-3-922. Lease to Arkansas Public Service Commission.

(a) The Arkansas Public Service Commission, or any successor commission, including the Arkansas Transportation Commission, exercising the functions now exercised by the Arkansas Public Service Commission, is expressly authorized, empowered, and directed to house itself in the Arkansas Justice Building. It is expressly authorized, empowered, and directed to enter into and execute a lease agreement with the Arkansas Building Authority covering the space in the Arkansas Justice Building to be utilized by the Arkansas Public Service Commission for such term, containing such provisions, and for such amount as the Arkansas Public Service Commission and the authority shall determine.

(b) The lease agreement may be executed at any time after the plans for the Arkansas Justice Building have been prepared and approved in the manner provided in this subchapter.

(c) If executed prior to the completion of the Arkansas Justice Building, the lease shall provide that the Arkansas Public Service Commission shall not be obligated to begin the rental payments provided therein until it shall actually occupy its facilities in the Arkansas Justice Building, which occupancy shall be as soon as practicable after the completion of the Arkansas Justice Building, and the lease agreement shall be effective and binding upon the parties from and after the date of its actual execution.

(d) The rental payments under the lease shall be made and handled as follows:

(1) The Secretary of the Arkansas Public Service Commission, or any successor commission, including the Arkansas Transportation Commission, exercising the functions now exercised by the Arkansas Public Service Commission, shall remit directly to the secretary of the commission for deposit in the Justice Building Fund the amount due on the annual rental under the lease from the fees or other imposts collected for its operation and maintenance, as provided by §§ 23-2-101 and 23-16-101 et seq., and such rentals shall be an allowable charge in determining the amounts due by utilities, rail carriers, and other carriers;

(2) The rental payments shall be made by the Secretary of the Arkansas Public Service Commission from the moneys received by the Arkansas Public Service Commission prior to the payment of any of the moneys into the State Treasury; and

(3) Upon the discharge of all bonds authorized by this subchapter, rental payments shall be deposited into the Justice Building Fund and applied to the operation and maintenance of the Arkansas Justice Building, as set forth in this subchapter.

History. Acts 1955, No. 375, § 13; A.S.A. 1947, § 5-612; Acts 1989 (3rd Ex. Sess.), No. 64, § 4.

Publisher's Notes. As to transfer of Arkansas Justice Building Commission to Arkansas Building Authority, see Publisher's Note at beginning of this subchapter.

The powers and duties of the Arkansas Transportation Commission were transferred to the Arkansas State Highway and Transportation Department pursuant to Acts 1989 (1st Ex. Sess.), No. 153, § 2.

CASE NOTES

ANALYSIS

Constitutionality.
Lease valid.

Constitutionality.

Provisions of this section authorizing rental payments by Public Service Commission out of its funds prior to payment of the funds into the State Treasury are not contrary to Ark. Const., Art. 5, § 29, or Art. 16, § 12, as the funds involved are

"cash funds" within the rule excepting such funds from the constitutional provisions. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

Lease Valid.

Long-term leasing agreement between the Public Service Commission and the Justice Building Commission was valid. *McArthur v. Smallwood*, 225 Ark. 328, 281 S.W.2d 428 (1955).

22-3-923. Allocation of space.

(a)(1) It is found and determined by the General Assembly that:

(A) The Arkansas Justice Building was constructed primarily to house the higher appellate courts and that other agencies were permitted to occupy portions of the building only because the space was not needed by the courts at that time;

(B) Since construction of the building, the electors of the state authorized the establishment of a new appellate court, the Court of Appeals;

(C) The Court of Appeals is in urgent need of additional space in the Arkansas Justice Building in order to perform its responsibilities; and

(D) It is essential that the additional space to be provided the Court of Appeals is contiguous to the space now assigned to that court.

(2) Furthermore, it is the purpose and intent of this section to establish specific priorities for use of space in the Arkansas Justice Building and to specifically authorize the Arkansas Building Authority to allocate space in the Arkansas Justice Building in accordance with those priorities to assure that the appellate courts and the services and

facilities essential to the effective and efficient operation of the courts, such as library facilities, are given first priority in the use of space in the building.

(b)(1) Space in the Arkansas Justice Building shall be allocated by the authority, after seeking the advice of the Joint Interim Committee on Legislative Facilities, to the following courts, library, and offices in the order of priority listed:

- (A) The Supreme Court;
- (B) The Court of Appeals;
- (C) The Clerk of the Supreme Court;
- (D) The Supreme Court Library; and
- (E) The Administrative Office of the Courts.

(2) The space requirements of each court, library, or office listed in this subsection must be adequately met before any space is allocated to any other office or agency.

(c) If the space requirements of the courts, library, and offices listed in subsection (b) of this section are adequately met, the authority, after seeking the advice of the Joint Interim Committee on Legislative Facilities, may allocate any additional space to any other offices or agencies it deems appropriate.

(d) The authority shall allocate space in accordance with the priorities prescribed in this section as soon as practicable after April 3, 1985, in order that the additional space allocated to the courts, library, and offices enumerated in this section shall be available on or before July 1, 1985.

(e)(1) The provisions of §§ 22-3-901—22-3-918, 22-3-921, and 22-3-922 and the covenants and obligations of the authority entered into in connection with the issuance of bonds pursuant thereto are ratified and confirmed.

(2) Nothing in this section is intended or shall be interpreted to alter the amounts of, due dates for, or obligors of lease rentals payable pursuant to leases entered into between the authority and any lessee identified in §§ 22-3-901—22-3-918, 22-3-921, and 22-3-922, or any successor thereto, or to alter the handling, deposit, or application of the lease rentals.

History. Acts 1985, No. 791, §§ 1-6; A.S.A. 1947, §§ 5-622 — 5-627; Acts 2003, No. 364, § 15.

Publisher's Notes. As to transfer of Arkansas Justice Building Commission to Arkansas Building Authority, see Publisher's Note at beginning of this subchapter.

The powers and duties of the Arkansas Transportation Commission were transferred to the Arkansas State Highway and Transportation Department pursuant to Acts 1989 (1st Ex. Sess.), No. 153, § 2.

Amendments. The 2003 amendment added subdivision designations in (a)(1) and made related changes; in (a)(2), sub-

stituted "Furthermore" for "Further" and "Arkansas Building Authority" for "Arkansas Justice Building Commission"; rewrote (b) and (c); substituted "authority" for "Arkansas Justice Building Commission" in (d); deleted former (e) through (g); redesignated former (h) as present (e); substituted "§§ 22-3-901—22-3-918, 22-3-921, and 22-3-922" for "§§ 22-3-901 — 22-3-922" in (e)(1) and (2); substituted "authority" for "Arkansas Justice Building Commission" in (e)(1); substituted "authority" for "commission" in (e)(2); and made minor punctuation changes.

22-3-924. Legislative intent.

It is the intent of the General Assembly that the Supreme Court and the Court of Appeals shall not be required to pay any rental fees for space utilized in the Arkansas Justice Building.

History. Acts 1995, No. 149, § 12.

A.C.R.C. Notes. References to "this subchapter" in §§ 22-3-901 — 22-3-923 may not apply to this section which was enacted subsequently.

Former § 22-3-924, concerning legislative intent, is deemed to be superseded by this section. The former section was derived from Acts 1993, No. 1224, § 14.

SUBCHAPTER 10 — WAR MEMORIAL STADIUM

SECTION.

- 22-3-1001. Stadium Commission — Creation — Members — Meetings.
- 22-3-1002. Powers and duties of Stadium Commission generally.
- 22-3-1003. Secretary of Stadium Commission.
- 22-3-1004. Financing authority of Stadium Commission.
- 22-3-1005. Bonds — Issuance and terms.
- 22-3-1006. Bonds — Execution.

SECTION.

- 22-3-1007. Bonds — Pledge of revenues — Restrictions.
- 22-3-1008. Bonds — Tax exemptions.
- 22-3-1009. [Repealed.]
- 22-3-1010. Audit of accounts — Reports.
- 22-3-1011. Establishment by Stadium Commission of bank accounts — Deposits and withdrawals — Preaudit.
- 22-3-1012, 22-3-1013. [Repealed.]

Effective Dates. Acts 1947, No. 249, § 15: effective on passage.

Acts 1961, No. 228, § 7: Mar. 14, 1961. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the Stadium Commission is now attempting to refund its outstanding debt as authorized by Act 165, approved March 4, 1959, but that to date such attempt has been unsuccessful; that the refunding of said debt at this time will not only place the said Commission in a financial position where it can legally make needed improvements to War Memorial Stadium without breaching its contract with the holders of its outstanding bonds, but also to avert a default on such bonds; that an increase in the membership of the Commission, whereof all sections of the state will be represented, will assure the successful refunding of said bonds in that an enlarged membership will be able to contact all bondholders for the purpose of selling such holders on the practicability of exchanging their present bonds for refunding bonds; and that only by the passage and immediate operation of this act may such needed improvements

be made and the default on the said debt be averted. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force on and after its passage and approval."

Acts 1967, No. 282, § 5: Mar. 10, 1967. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that due to the large number of members of the Stadium Commission provided for under existing law it is difficult at times to obtain a quorum for the transaction of business; that under existing law the two-year terms of office of members of the Commission do not assure the continuity of service required to properly carry out presently planned improvements to War Memorial Stadium; and that only by the immediate passage and approval of this act may the aforesaid conditions be alleviated. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force on and after its passage and approval."

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings
Under the Arkansas Freedom of Informa-
tion Act, 38 Ark. L. Rev. 268.

22-3-1001. Stadium Commission — Creation — Members — Meetings.

(a) There is created a Stadium Commission consisting of eight (8) members to be appointed by the Governor with the advice and consent of the Senate. The commission shall have exclusive jurisdiction for the operation of the stadium known as War Memorial Stadium which shall be for the use of all the schools, colleges, and universities of the state under the supervision of the commission.

(b) Each congressional district of the state shall be represented by membership on the commission, and the other four (4) members shall be from the state at large.

(c) Members of the commission appointed by the Governor under the provisions of this subchapter, in addition to possessing the qualifications of an elector, shall reside in the State of Arkansas.

(d)(1) The Secretary of State shall, within ten (10) days and without charge therefor, furnish a certificate to each individual so appointed by the Governor, whereupon the appointee shall, within fifteen (15) days thereafter, notify the Governor and the Secretary of State, in writing, of his or her acceptance of the appointment.

(2) In the event any appointee shall fail to give notice of acceptance within the time required, then the appointment shall be void, and the Governor shall make another appointment.

(e) Each member shall be appointed to a seven-year term commencing on January 15 following the expiration date of the preceding member's term and ending on January 14 of the seventh year following the year in which the term commenced.

(f) Any vacancies arising in the membership of the commission for any reason other than expiration of the terms for which the members were appointed shall be filled by appointment by the Governor, to be thereafter effective until the expiration of such terms.

(g) Before entering upon their respective duties, each member of the commission shall take, subscribe, and file in the office of the Secretary of State an oath to support the Constitution of the United States and the Constitution of the State of Arkansas and to faithfully perform the duties of the office upon which he or she is about to enter and that he or she will not be or become interested, either directly or indirectly, in any contract made by the commission.

(h)(1) Any member of the commission who shall violate his or her oath of office shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than five hundred dollars (\$500) or by imprisonment for not less than six (6) months, or by both such fine and imprisonment.

(2) Any member who shall have thus been convicted of a misdemeanor shall be ineligible for continued membership on the commission, and any contract so entered into shall be null and void.

(i) The Governor shall designate a member of the commission as its chair, and the member so designated shall serve as chair at the pleasure of the Governor.

(j) All meetings of the commission shall be held on call by the chair, or by any four (4) or more members, on advance notice to each member and at such place as in each instance may suit the commission's convenience. All meetings shall be open to the public, and complete records of the proceedings shall be kept.

(k) A quorum for the transaction of business at any meeting shall consist of not fewer than four (4) members, and such quorum shall have the power to act for the commission by an affirmative vote of a majority thereof, except that the affirmative vote of not fewer than four (4) members shall be requisite for the adoption of any motion or resolution involving the expenditure of funds.

History. Acts 1947, No. 249, §§ 1-3, 5; §§ 1-3; 1975, No. 477, § 1; A.S.A. 1947, 1961, No. 228, §§ 1-3; 1967, No. 282, §§ 80-3401 — 80-3403, 80-3405.

22-3-1002. Powers and duties of Stadium Commission generally.

The Stadium Commission shall have and be subject to the powers and duties conferred or imposed upon it by this subchapter; and for the purpose of regulating its own procedure and carrying out its powers and duties, it shall have the authority to make, amend, and enforce all necessary or desirable rules or regulations not inconsistent with law. Subject to the applicable limitations provided in this subchapter, the commission shall:

- (1) Have exclusive jurisdiction for the government of the stadium;
- (2) Purchase, lease, or rent any real property, or acquire any real property by the exercise of its right of eminent domain, that right being vested in the commission;
- (3) Purchase, lease, or rent any corporeal or personal property;
- (4) Receive bequests or donations of any real, corporeal, or personal property;
- (5) Sell, barter, lease, or rent any real, corporeal, or personal property or convert into money any property which cannot be used in the form received;
- (6) Fix the amount of admissions, fees, commissions, concessions, rents, and other charges to be collected by the commission for the use of the stadium for athletic or other events;
- (7) Establish accounts in one (1) or more banks and thereafter, from time to time, make deposits in and withdrawals from these accounts;
- (8) Contract and be contracted with;
- (9) Exercise such police powers within the bounds of any real property owned or controlled by it as may be necessary to abate nuisances and otherwise keep the peace; and

(10) Take such other action, not inconsistent with law, as it may deem necessary or desirable to carry out the intent and purposes of this subchapter.

History. Acts 1947, No. 249, § 4;
A.S.A. 1947, § 80-3404; Acts 1991, No. 37,
§ 1.

22-3-1003. Secretary of Stadium Commission.

(a) The Chair of the Stadium Commission, by and with the advice and consent of the other members, shall appoint the Secretary of the Stadium Commission, but the secretary shall have no vote on questions coming before the Stadium Commission.

(b) The secretary of the commission shall be its disbursing agent and executive officer and shall administer the provisions of this subchapter and the rules, regulations, and orders established thereunder.

(c) The commission may, by resolution duly adopted, delegate to the secretary any of the powers or duties vested in or imposed upon it by this subchapter, and until such resolution shall subsequently have been modified or rescinded, such delegated powers and duties may be exercised by the secretary in the name of the commission.

(d) The secretary shall receive as compensation for his or her services such salary as may, from time to time, be fixed by the commission, and, in fixing the amount of the salary, the commission shall take into consideration the responsibilities of the office and the amount of time required in the secretary's performance of his or her official duties.

(e)(1) The secretary shall furnish bond to the State of Arkansas in such amount as shall be fixed by the commission.

(2) The bond shall be executed by the secretary, as principal, and with a corporate guaranty or indemnity company, as surety, and shall be conditioned that the secretary will faithfully perform the duties of his or her office and properly account for all funds received and disbursed by him or her.

(3) The premium on the bond shall be a proper charge against the funds under the control of the commission.

History. Acts 1947, No. 249, § 6; 1961,
No. 228, § 5; A.S.A. 1947, § 80-3406.

22-3-1004. Financing authority of Stadium Commission.

(a) The Stadium Commission is authorized and empowered to enter into the necessary contracts for the borrowing of all funds that it may determine will be required in connection with the financing of the stadium, including architectural, engineering, legal, and other expenses incidental to the construction and to the issuance of the bonds authorized by this subchapter.

(b) For the purpose of obtaining loans or carrying out any conditions imposed by the original purchaser of the bonds authorized by this subchapter, the commission may execute such documents and enter into such agreements not contrary to this subchapter or any other law as it may deem necessary or proper in connection with this subchapter, including, but without limiting the generality of the foregoing, any agreements relating to:

(1) The fixing and imposing of minimum charges for admissions, fees, concessions, rents, and other charges to be collected by the commission for the use of the stadium for athletic or other events and the maximum percentage of admissions to athletic games to be given the contesting colleges or schools;

(2) The priority of the lien of the bonds on the net revenues derived from the stadium; and

(3) The banks in which the revenues derived from the stadium and the proceeds of the bonds are deposited.

History. Acts 1947, No. 249, § 4;
A.S.A. 1947, § 80-3404.

22-3-1005. Bonds — Issuance and terms.

(a) In evidence of any loan of funds, the Stadium Commission is authorized and empowered to issue its negotiable registered bonds.

(b)(1) The bonds shall be payable at such time or times and at such place or places, shall be in such form and denominations, may be subject to such terms of redemption, with or without a premium, shall bear interest payable at such rate or rates, and shall be sold for such price and in such manner, as the commission by resolution shall determine.

(2) The bonds shall not bear interest at a rate in excess of the maximum authorized by Arkansas Constitution, Amendment 60, or any similar provision hereafter adopted and shall not be sold at a price which would represent a cost to the commission over the life of the bonds in excess of the maximum interest rate authorized by Arkansas Constitution, Amendment 60, or any similar provision hereafter adopted.

(3) The bonds shall contain a statement on their face that the commission will not be obligated to pay the bonds with interest thereon except from the net revenues derived from the operation of the stadium. All of the moneys received by the commission from the state pursuant to § 14-171-201 et seq. shall be deemed to be revenues derived from the operation of the stadium.

(4) The bonds shall have all the qualities and incidents of negotiable instruments under the negotiable instruments laws of this state.

History. Acts 1947, No. 249, § 4;
A.S.A. 1947, § 80-3404; Acts 1991, No. 37,
§ 2; 1995, No. 819, § 1.

22-3-1006. Bonds — Execution.

The bonds shall be executed by manual or facsimile signature of the Chair of the Stadium Commission and the Secretary of the Stadium Commission, and in the event that any of the officers whose signatures appear on the bonds shall have ceased to be officers before delivery, their signatures shall, nevertheless, be valid and sufficient for all purposes the same as if they had remained in office until delivery.

History. Acts 1947, No. 249, § 4;
A.S.A. 1947, § 80-3404; Acts 1995, No.
819, § 1.

22-3-1007. Bonds — Pledge of revenues — Restrictions.

(a) The bonds and interest thereon shall be payable solely from and secured by a pledge only of the net revenues, or any part of such revenues, derived from the operation of the stadium and which remain after there has been set aside each month a sufficient amount for the reasonable expenses of operation and maintenance of the stadium and its depreciation and after a proper percentage of the admissions to athletic games and other events is given to the participants therein or the organizers thereof. All of the moneys received by the Stadium Commission from the state pursuant to § 14-171-201 et seq. shall be deemed to be revenues derived from the operation of the stadium.

(b) The pledge may be contained in the resolution authorizing the issuance of the bonds or in a trust indenture.

(c) The bonds shall be considered as obligations only of the commission, and in no event shall they ever be considered a debt for which the faith and credit of the State of Arkansas or any of its revenues are pledged; however, this shall not be construed as preventing the commission from applying toward the payment of the bonds any funds received from sources other than the revenues derived from the operation of the stadium.

(d) No member of the commission shall be personally liable on the bonds or for any damages sustained by anyone in connection with the contracts for loans or the construction of the stadium unless it shall be made to appear that he or she has acted with a corrupt intent.

History. Acts 1947, No. 249, § 4;
A.S.A. 1947, § 80-3404; Acts 1995, No.
819, § 1.

22-3-1008. Bonds — Tax exemptions.

The bonds issued under the provisions of this subchapter shall be exempt from all taxes.

History. Acts 1947, No. 249, § 4;
A.S.A. 1947, § 80-3404.

22-3-1009. [Repealed.]

Publisher's Notes. This section, concerning limitation of liability of state, was repealed by Acts 1999, No. 24, § 1. The section was derived from Acts 1947, No. 249, § 11; A.S.A. 1947, § 80-3411; Acts 1995, No. 819, § 2.

22-3-1010. Audit of accounts — Reports.

An audit of the records and accounts of the Stadium Commission shall be made each year, and a copy of the report shall be filed with the Legislative Council, the Governor, and the Chief Fiscal Officer of the State.

History. Acts 1947, No. 249, § 10; 1961, No. 228, § 4; A.S.A. 1947, § 80-3410.

22-3-1011. Establishment by Stadium Commission of bank accounts — Deposits and withdrawals — Preaudit.

(a) The Stadium Commission may, by resolution duly adopted, open accounts in its name in one (1) or more banks and deposit therein all moneys received from the sale of its bonds and from admissions, fees, concessions, rents, and other charges collected for the use of the stadium or from any other source.

(b) From the accounts, the commission may withdraw funds for payment of the following:

- (1) Cost of the construction of the stadium;
- (2) Principal of and interest on any bonds that may be issued by it under authority of this subchapter;
- (3) Expenses of its members;
- (4) Salary and expenses of its secretary;
- (5) Salaries of its custodian, groundskeepers, and such other personnel as it may employ;
- (6) Insurance premiums for fire, lightning, and tornado insurance;
- (7) Such other items of reasonable expense as, in its opinion, may be required to maintain and operate the stadium; and
- (8) Amounts paid contesting colleges or schools.

(c) All withdrawals of funds in the bank accounts shall be made by use of voucher-checks, the form of which shall be prescribed by the Director of the Department of Finance and Administration. All voucher-checks so drawn shall be subject to preaudit by the director.

History. Acts 1947, No. 249, § 9; A.S.A. 1947, § 80-3409.

22-3-1012, 22-3-1013. [Repealed.]

Publisher's Notes. These sections, concerning authorization of financing of stadium improvements by income tax re-fund check-off and use of improvement and expansion funds, were repealed by implication by Acts 1993, No. 943. The

sections were derived from the following sources:

22-3-1012. Acts 1981, No. 545, § 1; A.S.A. 1947, § 80-3417.

22-3-1013. Acts 1981, No. 545, § 2; A.S.A. 1947, § 80-3418; Acts 1987, No. 879, § 10.

SUBCHAPTER 11 — LIVESTOCK SHOW FACILITIES

SECTION.

22-3-1101. Acquisition of facilities by state for holding the Arkansas State Fair and Livestock Show — Lease and sublease — Option to purchase.

SECTION.

22-3-1102. Eminent domain.

22-3-1103. Use of showgrounds — Future Farmers of America State Horse Show.

Preambles. Acts 1973, No. 569, contained a preamble which read: "Whereas, Arkansas Livestock Show Association, a non-profit corporation organized and existing under the laws of the State of Arkansas, is in possession as lessee of certain lands located within the city of Little Rock, Arkansas, and belonging to the State of Arkansas under the terms of a lease dated December 16, 1952 which expires on November 28, 1995; and

"Whereas, said lease requires the express consent of the State Board of Fiscal Control, as it then existed, for subleasing of any of said lands for terms longer than one year; and

"Whereas, Arkansas Livestock Show Association has constructed a regulation size standard stock car racing track on said grounds with a dirt surface and has constructed a straight-a-way quarter horse race track on said grounds but does not have funds and moneys in its possession or under its control to put an acceptable hard surface on said track and to build a grandstand, concession stand, restrooms, guard rails and other facilities necessary to the operation of said race tracks during the annual State Fair and Livestock Show and at other times during the year; and the construction and build-

ing of such facilities will require an expenditure of approximately \$500,000 and Arkansas Livestock Show Association is negotiating with certain proposed lessees who will build said facilities and pay rent thereon to Arkansas Livestock Association if the term of the existing lease is extended for a satisfactory period of time and the lease is amended so that these facilities may be subleased by Arkansas Livestock Show Association;

"Now therefore..."

Effective Dates. Acts 1975, No. 1002, § 10: Apr. 11, 1975. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly that the various facilities of the Forestry Commission and of the State Fair and Livestock Show are in dire need of being constructed, repaired, improved and equipped in order to provide adequate services to the public and that the immediate passage of this act is necessary in order to continue the availability of appropriations and funds. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its date of passage and approval."

22-3-1101. Acquisition of facilities by state for holding the Arkansas State Fair and Livestock Show — Lease and sublease — Option to purchase.

(a)(1) The Arkansas Livestock and Poultry Commission is empowered and authorized to enter into an agreement with the Arkansas

State Fair and Livestock Show Association and make such contracts as are necessary for the purpose of purchasing the permanent site of the association and for the purchase or construction of buildings and facilities for the holding of the Arkansas State Fair and Livestock Show;

(2) Any lands, buildings, or other improvements purchased by the state out of funds so provided shall belong to the State of Arkansas, and the commission is empowered to enter into an agreement with and execute a lease for a term of fifty (50) years to the association for the use of the facilities for the sum of one dollar (\$1.00) per year;

(3) The lease shall be executed at the time the state acquires title to the site now owned by the association;

(4) The commission reserves the right to cancel the lease, and it shall be forfeited back to the state in the event no show is held during a period of four (4) consecutive years, unless the holding of any show is made impracticable by reason of war or acts of God.

(b)(1) The association shall have the power to select architects and to draw and approve plans and supervise the construction of the buildings and improvements for the Arkansas State Fair and Livestock Show;

(2) During the lifetime of the lease, the association shall be given the option to purchase the lands, buildings, and improvements upon the payment to the state of the principal amount due to the state on the purchase price.

(c)(1) The commission is authorized and directed to negotiate with the association and execute a lease with it in lieu of the existing lease dated December 16, 1952, authorized by subsection (a) of this section, on the lands described therein and other lands now constituting a part of the association grounds and parking areas subsequently acquired by the State of Arkansas for a term expiring November 28, 2013, for the sum of one dollar (\$1.00) per year; and

(2) The lease shall include a provision that portions of the grounds suitable for the use of a standard stock car racing track and quarter horse racing track may be subleased by the association to any person who will, as a part of the transaction, hard-surface the automobile racetrack, build appropriate guardrails around the track, build a grandstand for spectators, and build adequate concession stands and restroom facilities, and will allow that portions of the grounds may be leased to other persons for use in connection with and consistent with the Arkansas State Fair and Livestock Show activities.

History. Acts 1945, No. 313, § 4; 1973, No. 569, § 1; A.S.A. 1947, §§ 78-1601, 78-1601.1.

22-3-1102. Eminent domain.

(a) From and after the passage and approval of this section, the Arkansas Livestock and Poultry Commission shall have the right to acquire, by eminent domain, any real property, including the improvements and fixtures thereon, which it may deem necessary to provide a

permanent site and show facilities for a state fair and livestock show and for aid to the livestock industry.

(b) The commission, upon adoption of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use, may exercise the power of eminent domain:

(1) In the manner provided by §§ 18-15-1202 — 18-15-1207 for taking private property for rights-of-way for railroads;

(2) In the manner provided by §§ 18-15-301 — 18-15-307; or

(3) Pursuant to any other applicable statutory provision for the exercise of the power of eminent domain.

History. Acts 1947, No. 253, §§ 1, 2; A.S.A. 1947, §§ 78-1602, 78-1603.

Publisher's Notes. In reference to the term "passage and approval of this sec-

tion," Acts 1947, No. 253, was signed by the Governor on March 19, 1947, and took effect on June 12, 1947.

22-3-1103. Use of showgrounds — Future Farmers of America State Horse Show.

(a) The Arkansas State Fair and Livestock Show Association shall permit organizations and associations to use the association's showgrounds and facilities for the Future Farmers of America State Horse Show and other related livestock and poultry activities without charge, where the use involves no additional costs to the association.

(b) When any organization or association is permitted to use the showgrounds and facilities for the Future Farmers of America State Horse Show and other related livestock and poultry activities, the organization or association so using the grounds and facilities shall clean the livestock showgrounds and facilities and remove all trash and debris resulting from that use and shall leave the grounds and facilities in at least as good condition as the grounds and facilities were prior to the activities.

History. Acts 1975, No. 1002, § 2.

SUBCHAPTER 12 — PUBLIC FACILITIES FINANCING

SECTION.

- 22-3-1201. Title.
- 22-3-1202. Purpose.
- 22-3-1203. Definitions.
- 22-3-1204. Provisions exclusive and overriding.
- 22-3-1205. Powers of Arkansas Building Authority generally.
- 22-3-1206. Plan for proposed construction — Hearings and review — Filing of financial statement.
- 22-3-1207. Certificates of indebtedness —

SECTION.

- Issuance and purchase authorized.
- 22-3-1208. Certificates of indebtedness — Terms and execution.
- 22-3-1209. Certificates of indebtedness — Pledge of revenues and restrictions generally.
- 22-3-1210. Certificates of indebtedness — Public Facilities Debt Service Fund.
- 22-3-1211. Certificates of indebtedness — Tax exemption.
- 22-3-1212. Certificates of indebtedness —

SECTION.

- Funds used for purchase — Retirement.
- 22-3-1213. Certificates of indebtedness — Alternative method of payment.
- 22-3-1214. Certificates of indebtedness — Disposition of proceeds.
- 22-3-1215. [Repealed.]
- 22-3-1216. Authorizing resolution as enforceable contract — Covenantants.
- 22-3-1217. Disposition of revenues from agricultural and livestock

SECTION.

- activities of correctional facility.
- 22-3-1218. Disposition of revenues from prison labor.
- 22-3-1219. Employment of architects and other professionals — Notice for bids for construction.
- 22-3-1220 — 22-3-1224. [Reserved.]
- 22-3-1225. Prison Construction Trust Fund.
- 22-3-1226. [Transferred.]

A.C.R.C. Notes. References to “this subchapter” in §§ 22-3-1201 — 22-3-1219 may not apply to §§ 22-3-1225 and 22-3-1226 which were enacted subsequently.

Preambles. Act 1987, No. 652, contained a preamble which read: “Whereas, Act 458 of 1983 (the “Act”) authorized and empowered Arkansas State Building Services, with the approval of the Governor, to issue its State Building Services certificates of indebtedness in a total principal amount not to exceed twenty-five million dollars (\$25,000,000.00); and

“Whereas, the act authorized and empowered the State Board of Finance to purchase State Building Services certificates of indebtedness in a total principal amount not to exceed twenty-five million dollars (\$25,000,000.00); and

“Whereas, the issuance of State Building Services certificates of indebtedness has proved to be an efficient and economical means of providing for the construction of facilities as authorized pursuant to the Act; and Whereas, the General Assembly hereby finds that to ensure that Arkansas State Building Services has an efficient and economical means of providing for the construction of buildings as authorized pursuant to the Act, it is deemed appropriate and necessary to amend the Act to provide that the authority to issue of such State Building Services certificates of indebtedness shall be a continuing authority, subject to the limitations contained in the Act; and

“Whereas, in order to provide for the continuing authority to issue State Building Services certificates of indebtedness, the Act should be amended as hereinafter set forth;

“Now therefore...”

Effective Dates. Acts 1983, No. 458, § 22: Mar. 15, 1983. Emergency clause provided: “The General Assembly hereby finds and declares the present facilities for the housing of inmates committed to, or in the custody of, the Department of Correction are not adequate; that the facilities for the housing and other activities in connection with the prison agriculture and industry programs of the Department of Correction are not adequate; that our state-supported institutions of higher education are in need of additional facilities and equipment; that there is an urgent need to undertake the acquisition, construction, repair, renovation, alteration, maintenance and equipping of existing and/or new facilities of the Department of Correction and the state-supported institutions of higher education in order for them to continue to carry out their responsibilities and obligations. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health, and safety, shall be effective upon its passage and approval.”

Acts 1983, No. 895, § 6: July 1, 1983. Emergency clause provided: “It is hereby found and determined by the Seventy-Fourth General Assembly that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1983 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1,

1983 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1983."

Acts 1983 (Ex. Sess.), No. 112, § 6: Nov. 10, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly meeting in First Extraordinary Session that uncertainty exists as to the meaning of certain provisions of Act 458 of 1983 and that clarification of the meaning of such provisions of Act 458 of 1983 is essential to the efficient operation of state government. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after the date of its passage and approval."

Acts 1987, No. 652, § 6: Apr. 4, 1987. Emergency clause provided: "The General Assembly hereby finds and declares that a need exists to provide for a continuing method of financing the construction of facilities for the housing of inmates committed to, or in the custody of, the Department of Correction; facilities for the housing and other activities in connection with the prison agricultural and industry programs of the Department of Correction; and facilities for institutions of higher education and that there is an immediate need to provide for such continuing authority to issue State Building Services certificates of indebtedness to provide ad-

equate financing for the construction of such facilities. Therefore, an emergency is declared to exist and this Act, being necessary for the preservation of the public peace, health, and safety, shall be effective upon its passage and approval."

Acts 1989 (3rd Ex. Sess.), No. 86, § 13: Jan. 2, 1990. Emergency clause provided: "It is hereby found and determined by the General Assembly that the recent increase in violent crimes in this state has resulted in overcrowding in the prisons and local jails; that this act will provide a funding mechanism for construction of badly needed regional jails and correction facilities; that the proper administration of the provisions of this act requires that it become effective on a day certain. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall become effective January 2, 1990."

Acts 1995 (Ex. Sess.), No. 9, § 9: Oct. 19, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly meeting in First Extraordinary Session, that the provisions of this Act are of critical importance to the operation, construction, and contracting of correctional facilities and endeavors and that the provisions of this Act are of critical importance to the safety and well being of the people of the State of Arkansas. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 974: Jan. 1, 1998.

CASE NOTES

ANALYSIS

Delegation of legislative power.
Enactment.

Delegation of Legislative Power.

This subchapter did not create an unlawful delegation of legislative power. The members of the General Assembly need not themselves decide and specify in the statute what will be built, where it will be built, and what it will cost, and the administrative determination of those facts may

properly be delegated to a subordinate agency. *Wells v. Clinton*, 282 Ark. 20, 666 S.W.2d 684 (1984).

Enactment.

This subchapter was not improperly passed merely because the Senate concurred by voice vote in the House's amendments, for the ayes and nays need not be recorded when one branch concurs in amendments by the other branch. *Wells v. Clinton*, 282 Ark. 20, 666 S.W.2d 684 (1984).

22-3-1201. Title.

This subchapter shall be known and may be cited as the "Public Facilities Finance Act of 1983".

History. Acts 1983, No. 458, § 1;
A.S.A. 1947, § 13-2601.

22-3-1202. Purpose.

It has been found by the General Assembly that adequate construction, equipping, maintenance, and operation of facilities for the Department of Correction and the state-supported institutions of higher education are essential to the well-being of this state and that the pledging of the motor vehicles safety inspection fee, the fees derived from the agriculture and livestock activities and rentals of farm properties, the fees collected from the sale or disposition of articles and products manufactured through the operations of the prison industries program, and the rental fees collected by state-supported institutions of higher education from tenants other than state agencies is essential to the fulfillment of the purposes of this subchapter.

History. Acts 1983, No. 458, § 14;
A.S.A. 1947, § 13-2614.

22-3-1203. Definitions.

As used in this subchapter:

(1) "Agency" or "state agency" means any agency, board, officer, commission, department, division, or institution of the State of Arkansas;

(2)(A) "Building" or "buildings" means any and all buildings and related facilities constructed or acquired and equipped for the housing of inmates committed to, or in the custody of, the Department of Correction; any and all buildings and related facilities constructed, acquired, or equipped for the purpose of expanding the prison agriculture and industry programs within the department; and any and all buildings constructed, acquired, or equipped for any state-supported institution of higher education, the construction, acquisition, or equipping of which are authorized by this subchapter.

(B) The term "building" or "buildings" means a single building or complex of buildings or an expansion of an existing building or complex of buildings as may be determined best to serve the needs of the department or state-supported institutions of higher education and shall refer to and include such related structures, fixtures, and facilities as may be determined to be appropriate;

(3) "Certificates of indebtedness" means certificates of indebtedness authorized by and issued pursuant to the provisions of this subchapter;

(4)(A) "Construct" or "construction" means to acquire, construct, reconstruct, remodel, expand, install, or equip all lands, buildings, structures, improvements, or other property, either real, personal, or

mixed, which is useful in connection with the building, and to make other necessary expenditures in connection therewith by such methods and in such manner as the Arkansas Building Authority shall determine to be necessary or desirable to accomplish the powers, purposes, and authorities set forth in this subchapter.

(B) The term “construct” or “construction” shall be construed as including purchasing instructional equipment and major maintenance projects;

(5) “Department” means the Department of Correction created by § 12-27-103 and any successor agency;

(6) “Division” means any division, bureau, section, office, or officer of the Department of Correction;

(7) “Equip” means to install or place on or in any building or structure, or in connection with the use and operation of any building or structure, equipment of any and every kind, whether or not affixed, including, without limiting the generality of the foregoing, equipment used or employed in connection with the prison agriculture and industry programs; instructional equipment, materials, and books for use by any state-supported institution of higher education; and any and all library and reference books and materials;

(8) “1977 Bonds” means the Arkansas State Building Services Department of Public Safety Revenue Bonds dated September 1, 1977, authorized by and issued under Acts 1977, No. 490;

(9) “1979 Bonds” means the Arkansas State Building Services Department of Public Safety Revenue Bonds dated September 1, 1979, authorized by and issued under Acts 1977, No. 490;

(10) “Pledged revenues” means all nontax revenues authorized by § 22-3-1210 to be pledged for the security and payment of the certificates of indebtedness;

(11) “Surplus moneys” means pledged revenues plus any assets in the Public Facilities Debt Service Fund in amounts over and above that required for debt service when it comes due; and

(12) “The Arkansas Building Authority” means the Arkansas Building Authority, being the agency created by § 22-2-104, or any successor agency.

History. Acts 1983, No. 458, §§ 2, 9; 1983, No. 895, § 3; 1983 (Ex. Sess.), No. 112, §§ 1, 2; A.S.A. 1947, §§ 13-2602, 13-2602.1, 13-2609.

Publisher's Notes. Acts 1977, No. 490, referred to in this section, appears in the Title 19 Appendix.

22-3-1204. Provisions exclusive and overriding.

(a) This subchapter shall be the complete and sole authority for the establishment of the purposes set forth in this subchapter.

(b) To the extent that there is a conflict between the purposes of this subchapter and chapter 2 of this title, the provisions of this subchapter shall govern.

History. Acts 1983, No. 458, § 19;
A.S.A. 1947, § 13-2617.

22-3-1205. Powers of Arkansas Building Authority generally.

(a) In addition to the powers, purposes, and authorities set forth elsewhere in this subchapter or in other laws, the Arkansas Building Authority is authorized and empowered to:

(1) Acquire, construct, repair, renovate, alter, maintain, and equip existing or new buildings and capital improvements and the sites upon which they are situated for use by the Department of Correction for the housing, treatment, care, and rehabilitation of inmates committed to or in the custody of the department;

(2) Acquire, construct, repair, renovate, alter, maintain, and equip existing or new buildings and capital improvements and the sites upon which they are situated for use by the department for the prison agriculture and industry programs;

(3) Acquire, construct, repair, renovate, alter, maintain, and equip existing or new buildings and capital improvements and the sites upon which they are situated for use by state-supported institutions of higher education;

(4) Redeem or pay and discharge, or provide therefor, the outstanding 1977 Bonds and 1979 Bonds;

(5) Obtain the necessary funds for accomplishing its powers, purposes, and authorities from any source, including, without limitation, the proceeds of certificates of indebtedness issued under this subchapter; funds appropriated and made available under chapter 2 of this title; and funds, if any, appropriated for the buildings defined in this subchapter;

(6) Purchase, lease or rent, and receive the bequests or donations of, or otherwise acquire, sell, trade, or barter any property either real, personal, or mixed, and convert such property into money or other property;

(7) Contract and be contracted with;

(8) Apply for, receive, accept, and use any moneys and property from the United States Government, any agency, any state or governmental body or political subdivision, any public or private corporation or organization of any nature, or any individual;

(9) Invest and reinvest any of its moneys in securities selected by it; and

(10) Take such other action, not inconsistent with law, as may be necessary or desirable to carry out the powers, purposes, and authorities set forth in this subchapter and to carry out the intent of this subchapter.

(b) The powers, purposes, and authorities set forth in subsection (a) of this section shall be carried out in accordance with the duly promulgated policies of the Arkansas Building Authority Council, under and pursuant to chapter 2 of this title.

History. Acts 1983, No. 458, § 3;
A.S.A. 1947, § 13-2603.

22-3-1206. Plan for proposed construction — Hearings and review — Filing of financial statement.

(a) Before certificates of indebtedness as authorized by this subchapter may be issued by the Arkansas Building Authority and purchased by the State Board of Finance, the authority shall develop a plan for all proposed construction work to be performed, the location at which the work is to be performed, and the proposed use of the improvements to be carried out under the construction, together with the estimated cost thereof, and shall file a copy thereof with the Legislative Council, the Governor, and the Chief Fiscal Officer of the State at least sixty (60) days prior to the issuance of the certificates of indebtedness.

(b)(1) Upon receipt of a copy of a plan for proposed construction, the Legislative Council shall review the plan and may hold hearings in connection therewith, and upon the conclusion of the hearings and review, the Legislative Council may offer such advice to the authority as it deems appropriate in accomplishing the purposes set forth in this subchapter.

(2) Copies of the advice of the Legislative Council shall be furnished to the authority, the Governor, and the Chief Fiscal Officer of the State for their respective review and consideration.

(3) Nothing in this subsection is intended to prohibit or limit the authority of the authority to proceed in accordance with the purposes and intent of this subchapter, but in each instance in which the authority shall elect not to follow the advice of the Legislative Council, the authority shall file a written statement of the reasons therefor with the Legislative Council within thirty (30) days after receiving the advice of the Legislative Council.

(4) The Legislative Council shall report to the next following regular session of the General Assembly its advice offered to the authority in performing its duties under the provisions of this subchapter and shall attach to the report any statements in writing filed with the Legislative Council by the authority setting forth its reasons for not following the advice of the Legislative Council.

(c)(1) Whenever any certificates of indebtedness are issued under the provisions of this subchapter, the authority shall thereafter quarterly file with the Legislative Council a detailed financial statement reflecting all expenditures or transfers of funds, by major categories, made during the calendar quarter.

(2) The authority shall furnish the Legislative Council additional information concerning the use of funds provided in this subchapter that the Legislative Council may reasonably request.

History. Acts 1983, No. 458, § 20;
A.S.A. 1947, § 13-2618.

22-3-1207. Certificates of indebtedness — Issuance and purchase authorized.

(a)(1) For the purpose of providing funds for the construction of buildings as authorized in this subchapter, the Arkansas Building Authority, with the approval of the Governor, is authorized and empowered to issue, and the State Board of Finance is authorized and empowered to purchase, authority certificates of indebtedness of a total principal amount not to exceed twenty-five million dollars (\$25,000,000).

(2) However, this authority shall be continuing, solely for the purposes as authorized in § 22-3-1205(a)(1) and (2), so long as the total outstanding principal amount of the authority certificates of indebtedness shall not exceed, at any one time, more than twenty-five million dollars (\$25,000,000).

(b) The sale and purchase price of the certificates shall be at their par value.

History. Acts 1983, No. 458, § 4; 1983 (Ex. Sess.), No. 112, § 3; A.S.A. 1947, § 13-2604; Acts 1987, No. 652, § 2.

22-3-1208. Certificates of indebtedness — Terms and execution.

(a)(1) The certificates of indebtedness shall be in such form and denomination, and shall have such dates and maturities, and may be issued in such series, as the Arkansas Building Authority shall determine.

(2) The schedule of principal and interest maturities shall be arranged so that the aggregate amount maturing each year, except for the initial year or portion thereof, shall be equal, to the nearest hundred dollars, to each other annual installment, and that not more than twenty-one (21) years from date of issue will be required to retire all the certificates of any one (1) issue or series of certificates of indebtedness.

(b) The certificates shall contain a provision providing for their redemption in advance of maturity, at par, in inverse number order, at the option of the authority.

(c)(1) The certificates shall bear interest from the date of issuance at the rate of eight and one-half percent (8½%) per annum, payable semiannually on January 1 and July 1; the payment of the interest is to be evidenced by endorsement on the certificates by the Treasurer of State.

(2) Payment of the principal of and interest on the certificates shall be made in lawful money of the United States at the office of the Treasurer of State.

(d) The certificates of indebtedness shall be executed on behalf of the authority by the Chair and the Secretary of the Arkansas Building Authority Council.

History. Acts 1983, No. 458, § 5; A.S.A. 1947, § 13-2605; Acts 1987, No. 652, § 3.

22-3-1209. Certificates of indebtedness — Pledge of revenues and restrictions generally.

(a) The certificates shall be the obligations of the Arkansas Building Authority, and the nontax revenues available to the authority under the provisions of § 22-3-1210, as distinguished from any tax moneys which may be made available for the operation of the authority, are pledged to secure the payment of the certificates.

(b) The certificates shall contain a provision that neither the faith nor credit of the State of Arkansas nor any of its revenues are pledged to the payment of the certificates and that the debt is not the obligation of the individual members of the Arkansas Building Authority Council nor of the Director of the Arkansas Building Authority.

History. Acts 1983, No. 458, § 4; A.S.A. 1947, § 13-2604.

22-3-1210. Certificates of indebtedness — Public Facilities Debt Service Fund.

(a) The principal of and interest on the certificates of indebtedness issued under this subchapter shall be secured, except as stated in subdivision (c)(1) of this section, by a lien on and pledge of:

(1) All revenue derived from payments by the Arkansas Development Finance Authority pursuant to § 22-3-1225(b) which is a portion of the funds received by the authority from the sale of certificates for the inspection of motor vehicles;

(2) All moneys from the sale of or disposition of farm products, livestock, or other products produced in connection with the agriculture and livestock activities at any institution under the control of the Board of Corrections or any successor entity, excluding those moneys that may be accountable from, or the value of, products consumed within the Department of Correction and from rental of farm properties under the control of the board or any successor entity;

(3) All moneys from the sale or disposition of articles and products manufactured or produced by prison labor through the operations of the prison industry program, excluding those moneys that may be accountable from, or the value of, articles and products used or consumed within the department; and

(4) Fifty percent (50%) of the gross revenue, if any, derived from the leasing or renting to tenants, other than state agencies, of space in any new facility constructed or acquired with proceeds of any certificates issued under this subchapter.

(b) The pledging of the revenues enumerated in subsection (a) of this section, which are, collectively, the pledged revenues, is authorized. All pledged revenues are specifically declared to be nontax revenues

restricted in their use and dedicated to be used solely as provided and authorized in this subchapter.

(c)(1)(A) Moneys described in subdivision (a)(2) of this section are declared to be cash funds restricted in their use and dedicated and are to be used solely as authorized in § 15-5-213. The cash funds when received by the department shall not be deposited in or deemed to be a part of the State Treasury for purposes of Arkansas Constitution, Article 5, § 29, Arkansas Constitution, Article 16, § 12, Arkansas Constitution, Amendment 20, or any other constitutional or statutory provision related thereto. The department shall pay such cash funds to the Arkansas Development Finance Authority for deposit in the Correction Facilities Privatization Account of the Correction Facilities Construction Fund for the purposes authorized by § 15-5-213. The cash funds described in this subsection shall not be subject to appropriation to the extent required for debt service.

(B) Commencing on the first day of the month next succeeding the issuance of certificates of indebtedness under this subchapter, but not before July 1, 1983, and so long as any certificates are outstanding under this subchapter, the pledged revenues, except as provided herein, shall be deposited into the State Treasury as and when received by the department, by the Arkansas Building Authority by state-supported institutions of higher education, or by any other state agency, as the case may be, to the credit of a fund to be designated the "Public Facilities Debt Service Fund".

(2) So long as any certificates of indebtedness are outstanding under this subchapter, all moneys in the Public Facilities Debt Service Fund shall be used solely for payment and redemption of the outstanding 1977 Bonds and the 1979 Bonds, as authorized in this subchapter, for the payment of the principal of and interest on the certificates of indebtedness as authorized in this subchapter, for transfer of such amounts designated in subsection (a) of this section from time to time, as deemed necessary by the Chief Fiscal Officer of the State, to the Correction Facilities Privatization Account of the Correction Facilities Construction Fund established in § 15-5-213, and for the transfer of surplus moneys as defined in the authorizing resolution in the State Treasury for credit to the designated department funds, in accordance with the provisions of this subchapter.

(d)(1) The principal of and interest on the certificates of indebtedness shall be payable solely from the Public Facilities Debt Service Fund and from the moneys required by this subchapter to be deposited in the Public Facilities Debt Service Fund.

(2) The Arkansas Building Authority is directed to insert appropriate provisions in the authorizing resolution for the investing and reinvesting of moneys in the Public Facilities Debt Service Fund in securities selected by the Arkansas Building Authority, and all income derived therefrom shall be and become a part of such fund.

(e) So long as there are outstanding certificates of indebtedness issued under this subchapter, the General Assembly may eliminate or

change any source of revenue pledged in connection with the certificates but only on the condition that there is always maintained in effect and made available for the payment of outstanding certificates sources of nontax revenues and fees which produce revenues, as distinguished from tax revenues, at least sufficient in amount to provide for the payment when due of the principal of and interest on the outstanding certificates of indebtedness and to comply with all covenants provided in this subchapter.

(f) Nothing in this section is intended to prohibit the Arkansas Building Authority from investing moneys received under this section, as provided in this subchapter.

History. Acts 1983, No. 458, § 9; A.S.A. 1947, § 13-2609; Acts 1989 (3rd Ex. Sess.), No. 86, § 2; 1995 (Ex. Sess.), No. 9, § 1.

Publisher's Notes. Acts 1989 (3rd Ex. Sess.), No. 86, § 1, provided: "The General Assembly of the state of Arkansas hereby finds and declares that it is critical for the state to find methods to obtain additional correction facilities and regional jails for use by the Arkansas Department of Correction and the cities and counties within the state in order to alleviate severe jail overcrowding. It has also determined that

it is in the best interest of the state to provide a means by which the Arkansas Development Finance Authority can finance the construction and equipping of such correction and jail facilities and to provide a source of cash funds to the Authority to be used solely for such purposes."

Acts 1989 (3rd Ex. Sess.), No. 86, § 9, provided: "Nothing in this act shall be construed to prohibit any other source of financing or funding, either public or private, for the construction of correction facilities and regional jails."

22-3-1211. Certificates of indebtedness — Tax exemption.

Certificates of indebtedness issued under the provisions of this subchapter, and the interest thereon, shall be exempt from all state, county, and municipal taxes. This exemption shall include income, property, inheritance, and estate taxes.

History. Acts 1983, No. 458, § 15; A.S.A. 1947, § 13-2615.

22-3-1212. Certificates of indebtedness — Funds used for purchase — Retirement.

(a)(1) The state funds which may be used by the State Board of Finance in making the purchases of the certificates of indebtedness are those specifically referred to under the provisions of the State Treasury Management Law, § 19-3-201 et seq. [repealed].

(2) All certificates purchased or received shall be held in trust for the use and benefit of the various state funds used in the purchase.

(b) With respect to each certificate of indebtedness, at maturity thereof, the Treasurer of State shall:

(1) Withdraw the certificate from the Securities Account, charge the Securities Account with the principal thereof, and cancel the certificate;

(2) Withdraw from the Public Facilities Debt Service Fund established by this subchapter the aggregate amount of principal and interest then due on the certificate;

(3) Deposit in the State Treasury to the credit of the Cash Account that part of the aggregate amount representing the principal indebtedness evidenced by the certificate; and

(4) Deposit in the Securities Reserve Fund, as nonrevenue receipts, that part of the aggregate amount representing interest then due on the certificate.

(c) The certificates of indebtedness which have been paid and cancelled by the Treasurer of State shall be delivered to the Arkansas Building Authority.

History. Acts 1983, No. 458, § 7;
A.S.A. 1947, § 13-2607.

22-3-1213. Certificates of indebtedness — Alternative method of payment.

(a) In the event it shall be determined that the procedure set forth in § 22-3-1212 for the retirement of the certificates is unconstitutional or invalid for any reason, the Arkansas Building Authority is authorized and directed to establish an account in its name in a bank to be approved by the State Board of Finance and to deposit therein so much of the first moneys received by it each year under the provisions of § 22-3-1210 as shall be required to meet the next ensuing principal and interest maturities of its outstanding certificates, together with such additional amounts as may be necessary to pay any certificates which it shall determine to retire in advance of maturity.

(b) The authority is authorized and directed to reimburse the funds so deposited for the purpose of paying the principal of and interest on its outstanding certificates of indebtedness authorized under this subchapter.

History. Acts 1983, No. 458, § 8;
A.S.A. 1947, § 13-2608.

22-3-1214. Certificates of indebtedness — Disposition of proceeds.

Proceeds from the sale of the certificates of indebtedness shall be deposited in the State Treasury as follows:

(1) All funds held as a debt service reserve fund in the Public Facilities Debt Service Fund pursuant to the provisions hereof and the earnings thereon shall be applied on or after January 2, 1990, to redeem, to the extent possible, certificates of indebtedness identified as Series B;

(2) The remainder thereof shall be credited as trust funds to the "Public Facilities Construction Fund", which is established by this subdivision, and shall be used only for the redemption of the 1977

Bonds and the 1979 Bonds and for the construction of buildings authorized under this subchapter.

History. Acts 1983, No. 458, § 6; A.S.A. 1947, § 13-2606; Acts 1989 (3rd Ex. Sess.), No. 86, § 3.

Publisher's Notes. As to legislative finding and declaration of Acts 1989 (3rd Ex. Sess.), No. 86, see Publisher's Notes, § 22-3-1210.

22-3-1215. [Repealed.]

Publisher's Notes. This section, concerning outstanding bonds, pledged revenues, discharge and the effect of election not to redeem, was repealed by Acts 1989 (3rd Ex. Sess.), No. 86, § 10. The section was derived from Acts 1983, No. 458, §§ 9, 10; A.S.A. 1947, §§ 13-2609, 13-2610.

22-3-1216. Authorizing resolution as enforceable contract — Covenants.

Any authorizing resolution shall, together with this subchapter, constitute a contract between the Arkansas Building Authority, and the State Board of Finance, and the Treasurer of State, which contract and all covenants, agreements, and obligations therein shall be promptly performed in strict compliance with its terms and provisions, and the covenants, agreements, and obligations of the authority may be enforced by mandamus or other appropriate proceeding at law or in equity. In this regard, the authority is expressly authorized to include in any authorizing resolution all or part of the following covenants:

(1) That, to the fullest extent possible, it will continuously operate any and all facilities constructed pursuant to the authority of this subchapter as revenue-producing undertakings, including the maintenance, occupancy, and use of facilities and space so as to avoid any impairment of the security for the certificates of indebtedness; and

(2) That, to the fullest extent possible, it will always charge, impose, and collect sufficient revenues, including, without limitation, rentals to meet as due all debt service requirements, and otherwise comply with any provisions of authorizing resolutions concerning revenues and funds.

History. Acts 1983, No. 458, § 13; A.S.A. 1947, § 13-2613.

22-3-1217. Disposition of revenues from agricultural and livestock activities of correctional facility.

(a)(1) Prior to the issuance of certificates of indebtedness as authorized by this subchapter, all moneys collected by the Department of Correction from the sale or disposition of farm products, livestock, or other products produced in connection with agricultural and livestock activities at institutions under the control of the Board of Corrections, from the rental of farm properties under the control of the board, and

from payments from agencies of the state or federal government in connection with the farm operations of the department shall be deposited in the State Treasury as special revenues for credit to the Department of Correction Farm Fund, as authorized by law, to be used for the maintenance, operation, and improvement of the agriculture and farm programs of the department.

(2) Moneys which the department shall determine not to be necessary in defraying expenses of operating the agriculture programs of the department and which are profit or surplus from the operation of the agriculture programs shall, upon certification by the board to the Chief Fiscal Officer of the State, be transferred by the Chief Fiscal Officer of the State from the Department of Correction Farm Fund to the Department of Correction Inmate Care and Custody Fund Account within the State General Government Fund, to be used to supplement general revenues provided for the maintenance, operation, and improvement of the department, as provided by law.

(b)(1) Commencing the first day of the month next succeeding the issuance of any certificates of indebtedness as authorized by this subchapter, the moneys described in this section shall be pledged revenues, as stated in § 22-3-1210, and shall be deposited into the Public Facilities Debt Service Fund as established in § 22-3-1210.

(2) Any surplus prison farm moneys in the Public Facilities Debt Service Fund, as defined in the authorizing resolution, shall be transferred to the Department of Correction Farm Fund, upon certification by the Arkansas Building Authority to the Chief Fiscal Officer of the State, to the Treasurer of State, and to the Auditor of State, to be used for the maintenance, operation, and improvement of the agriculture and farm programs of the department, as provided by law.

(3) Such moneys deposited in the Department of Correction Farm Fund which the department shall determine not to be necessary in defraying expenses of operating the agriculture and farm programs of the department shall be, upon certification thereof by the board to the Chief Fiscal Officer of the State, transferred by the Chief Fiscal Officer of the State from the Department of Correction Farm Fund to the Department of Correction Inmate Care and Custody Fund Account within the State General Government Fund to be used to supplement general revenues provided for the maintenance, operation, and improvement of the department, as provided by law.

History. Acts 1983, No. 458, § 11;
A.S.A. 1947, § 13-2611.

22-3-1218. Disposition of revenues from prison labor.

(a)(1) Prior to the issuance of certificates of indebtedness as authorized by this subchapter, all moneys collected by the Board of Corrections from the sale or disposition of articles and products manufactured or produced by prison labor shall be forthwith deposited with the Treasurer of State, to be there kept and maintained as a special

revolving account designated as the "Department of Correction Prison Industries Fund" as authorized by law. The moneys so collected and deposited shall be used solely for the purchase of manufacturing supplies, equipment, machinery, and buildings used to carry out the purposes of the industries program within the Department of Correction as well as for the payment of the necessary personnel in charge thereof and to otherwise defray the necessary expenses incident thereto, all of which shall be under the direction and subject to the approval of the board.

(2) The Department of Correction Prison Industries Fund shall never be maintained in excess of the amount necessary to efficiently and properly carry out the intentions of this subchapter.

(3) When, in the opinion of the board, the Department of Correction Prison Industries Fund has reached a sum in excess of the requirements of this subchapter, the excess shall be transferred, upon certification to the Chief Fiscal Officer of the State by the board, to the Department of Correction Inmate Care and Custody Fund Account.

(b)(1) Commencing on the first day of the month next succeeding the issuance of any certificates of indebtedness as authorized by this subchapter, the moneys described in this section shall be pledged revenues, as stated in § 22-3-1210, and shall be deposited in the Public Facilities Debt Service Fund as established in § 22-3-1210.

(2) Any surplus prison industries moneys in the Public Facilities Debt Service Fund, as defined in the authorizing resolution, shall be transferred into the Department of Correction Prison Industries Fund upon certification by the Arkansas Building Authority to the Chief Fiscal Officer of the State, to the Treasurer of State, and to the Auditor of State. The moneys are to be used for the maintenance, operation, and improvement of the prison industries programs of the department, as provided by law.

(3) Such moneys deposited in the Department of Correction Prison Industries Fund as the department shall determine not to be necessary in defraying the expenses of operating the industries programs of the department, upon certification thereof by the board to the Chief Fiscal Officer of the State, shall be transferred by the Chief Fiscal Officer of the State from the Department of Correction Prison Industries Fund to the Department of Correction Inmate Care and Custody Fund Account within the State General Government Fund to be used to supplement general revenues provided for the maintenance, operation, and improvement of the department, as provided by law.

History. Acts 1983, No. 458, § 12;
A.S.A. 1947, § 13-2612.

22-3-1219. Employment of architects and other professionals — Notice for bids for construction.

(a) The Arkansas Building Authority is authorized to employ architects to prepare plans, specifications, and estimates of costs for the

construction of any and all facilities authorized by the provisions of this subchapter and to supervise and inspect the construction.

(b) After the authority shall have approved the plans and specifications prepared by the architect, it shall proceed to advertise for bids and contract for the construction of any and all facilities in accordance with applicable laws governing the construction of public buildings.

(c) The authority is authorized to engage and pay such professional, technical, and other help as it shall determine to be necessary or desirable in assisting it to carry out effectively the authorities, functions, powers, and duties conferred and imposed upon it by this subchapter.

History. Acts 1983, No. 458, § 16;
A.S.A. 1947, § 13-2616.

22-3-1220 — 22-3-1224. [Reserved.]

22-3-1225. Prison Construction Trust Fund.

(a) The Arkansas Development Finance Authority shall establish in its records a trust fund to be entitled the "Prison Construction Trust Fund." All moneys derived by or remitted to the Arkansas Development Finance Authority, from the sale of annual license plate validation decals, pursuant to § 27-14-1015(c), shall be deposited to the credit of the Prison Construction Trust Fund. The moneys in the Prison Construction Trust Fund shall not be general funds or revenues of the Arkansas Development Finance Authority and shall not be subject to the claims of the general creditors of the Arkansas Development Finance Authority.

(b) The Arkansas Development Finance Authority shall pay from the Prison Construction Trust Fund into the Public Facilities Debt Service Fund created by §§ 19-5-932 and 22-3-1210 the amount necessary, when added to other funds listed in § 22-3-1210, to pay the next-succeeding principal and interest payment for the certificates of indebtedness, but not to exceed twenty-five cents (25¢) times the number of annual license plate validation decals sold by the Department of Finance and Administration in each six-month period. Such payments shall be made by the Arkansas Development Finance Authority semi-annually two (2) business days prior to each July 1 and January 1 so long as the certificates of indebtedness permitted by the Public Facilities Finance Act of 1983, § 22-3-1201 et seq., are outstanding. All such payments by the Arkansas Development Finance Authority to the Public Facilities Debt Service Fund shall cease when the certificates of indebtedness have been paid or redeemed.

(c) All other funds in the Prison Construction Trust Fund shall be segregated, held, and used by the Arkansas Development Finance Authority solely to fund, or to provide for the funding of, the construction and equipping of:

(1) Correction or prison facilities to be used by the Department of Correction;

(2) Regional jail facilities operated by the Arkansas Department of Correction; or

(3) Regional jail facilities operated jointly by cities, counties, or regional jail commissions.

(d) The Arkansas Development Finance Authority shall be authorized to fund or to provide for the funding of facilities described in subdivisions (c)(1)-(3) of this section by loans, leases, other contracts, or the issuance of bonds all in accordance with the provisions of the Arkansas Development Finance Authority Act, § 15-5-101 et seq., and to pledge the cash funds collected by it from the sale of annual license plate validation decals and deposited in the Prison Construction Trust Fund, after payment of the amounts as specified in subsection (b) of this section to the repayment of any loans, leases, contracts, or bonds.

(e) The Arkansas Development Finance Authority shall not fund or provide for the funding of any facility described in subsection (c) of this section to be operated or utilized by the Department of Correction unless the project, the plans therefor, and the construction thereof have been reviewed and approved by the Arkansas Building Authority. The Arkansas Development Finance Authority shall not fund or provide for the funding of any other regional jail facility not utilized by the Department of Correction unless the project is in compliance with the minimum standards for jail facilities adopted by the state.

History. Acts 1989 (3rd Ex. Sess.), No. 86, § 8; Acts 1997, No. 974, §§ 12-14.

A.C.R.C. Notes. References to “this subchapter” in §§ 22-3-1201 — 22-3-1219 may not apply to this section which was enacted subsequently.

Acts 1997, No. 974, § 19, codified as §§ 22-3-1226 and 27-3-103, provided: “The Director of the Department of Finance and Administration shall have the authority to promulgate such regulations as are necessary to implement and administer the provisions of this Act.”

Publisher’s Notes. Acts 1989 (3rd Ex. Sess.), No. 86, § 1, provided: “The General Assembly of the state of Arkansas hereby finds and declares that it is critical for the state to find methods to obtain additional correction facilities and regional jails for use by the Arkansas Department of Correction and the cities and counties within

the state in order to alleviate severe jail overcrowding. It has also determined that it is in the best interest of the state to provide a means by which the Arkansas Development Finance Authority can finance the construction and equipping of such correction and jail facilities and to provide a source of cash funds to the Authority to be used solely for such purposes.”

Acts 1989 (3rd Ex. Sess.), No. 86, § 9, provided: “Nothing in this act shall be construed to prohibit any other source of financing or funding, either public or private, for the construction of correction facilities and regional jails.”

Cross References. Authority of Director of Department of Finance and Administration to implement provisions of this section, § 27-13-103.

22-3-1226. [Transferred.]

Publisher’s Notes. Acts 1997, No. 974, § 19, was codified as § 22-3-1226 in error.

Acts 1997, No. 974, § 19, is codified as § 27-13-103.

SUBCHAPTER 13 — VENDORS

SECTION.

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A.C.R.C. Notes. References to “this subchapter” in §§ 22-3-1301 — 22-3-1311 may not apply to § 22-3-1312 which was enacted subsequently.

Effective Dates. Acts 1969, No. 201, § 16: Mar. 7, 1969. Emergency clause provided: “It is hereby found and determined by the General Assembly that at the present time there is no law in this state which gives blind persons a preference in the establishment of vending facilities on state property; that it is the policy of this state to assist blind persons to become self-supporting; that the giving of such preference will further the policy of the state to promote employment of the blind; and, that this act is immediately necessary to accomplish this purpose. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in effect from the date of its passage and approval.”

Acts 1975, No. 906, § 4: Apr. 7, 1975. Emergency clause provided: “It is hereby found and determined by the General Assembly that the cafeteria facilities located in the State Capitol were not intended to be included under Acts 1969, No. 201, in the giving of preference to blind persons in the establishment of vending facilities on state property, and that said cafeteria facilities are currently deemed necessary for the interest of the employees of the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in

effect from the date of its passage and approval.”

Acts 1983, No. 768, § 3: Mar. 24, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that Section 1 of Act 906 of 1975 needs immediate amending because of the present requirement of the Department of Correction to forward profits from these vending facilities to the Arkansas Vending Stand Program for the Blind. These profits aid in funding of services for the Department of Correction employees that otherwise would be unavailable. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force after its passage and approval.”

Acts 1987, No. 1049, § 9: July 1, 1987. Emergency clause provided: “It is hereby found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1987 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1987 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the

public peace, health and safety shall be in full force and effect from and after July 1, 1987.”

Acts 1991, No. 1022, § 5: Apr. 8, 1991. Emergency clause provided: “It is hereby found and determined by the Seventy-Eighth General Assembly that clarification needs to be provided in existing law concerning the affect of student program changes on licensed vending facilities operated by blind persons. That this act provides such clarification and also provides a mechanism for resolution of the current situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1999, No. 750, § 5: Mar. 22, 1999. Emergency clause provided: “It is found and determined by the Eighty-second General Assembly of the State of Arkansas that certain private businesses have entered into lease agreements in state-

owned buildings with State Building Services and have invested valuable time and money to build small businesses in reliance on those agreements, that some of those businesses are now threatened with termination by effect of law without recourse or appeal, and that it creates an inequitable situation which can only be remedied by changing the law to allow for an extension of those leases in effect on June 1, 1999 with State Building Services. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

22-3-1301. Definitions.

As used in this subchapter:

(1) “Blind” or “blind person” means a person having not more than $\frac{20}{200}$ visual acuity in the better eye with correcting lenses, or visual acuity greater than $\frac{20}{200}$ but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle of no greater than twenty degrees (20°);

(2) “Blind operator” and “blind vending facility operator” mean a blind person, as defined in subdivision (1) of this section, who is licensed by the licensing agency to operate a vending facility, as defined in subdivision (8) of this section;

(3) “Licensing agency” means the Division of Services for the Blind of the Department of Human Services;

(4) “Regular vending facility” means a vending facility where food preparation or cooking is not done on state property;

(5) “State agency” means a department, commission, agency, or instrumentality of state government or operation;

(6) “State agency administrator” means the head of each department, commission, or agency, or constitutional officer or official, in control of the maintenance, operation, and protection of state property;

(7) “State property” or “state building” means buildings and land owned, leased, or otherwise controlled by the state, except the cafeteria located in the State Capitol; and

(8) “Vending facility” means a snack bar, cafeteria, restaurant, cafe, concession stand, vending service from coin-operated machines, vend-

ing stands, cart service, or other facilities at which food, drinks, novelties, newspapers, periodicals, confections, souvenirs, tobacco products, or related items are regularly sold.

History. Acts 1969, No. 201, § 13; 1975, No. 906, § 2; A.S.A. 1947, § 80-2585.

22-3-1302. Applicability.

This subchapter is not intended to cover the following vending facilities:

(1) Vending facilities operated by universities and colleges or the vending facilities provided as an integral part of their services to students or as a training program for students;

(2) Food service provided by hospitals or residential institutions of the state as a direct service to patients, inmates, correctional staff, trainees, or otherwise institutionalized persons; and

(3) The cafeteria located in the basement of the State Capitol. However, the exemption of the cafeteria located in the basement of the State Capitol shall in no way affect the continued operation of the blind vending facility on the third floor of the State Capitol.

History. Acts 1969, No. 201, § 12; 1975, No. 906, § 1; 1983, No. 768, §§ 1, 2; A.S.A. 1947, § 80-2584.

22-3-1303. Preference to blind persons to operate vending facilities on state property.

(a) For the purpose of assisting blind persons to become self-supporting and to further promote employment of the blind in Arkansas, state agency administrators shall assure that preference is given to the licensing agency in authorizing the operation of vending facilities on state property through the organized vending facility program operated by the licensing agency.

(b) The licensing agency shall give preference in the assignment of state vending facilities to blind persons in need of employment who have been licensed to operate vending facilities in Arkansas for the dispensing of such items as, but not limited to, newspapers, periodicals, confections, tobacco products, and articles, including food and beverages, as may be dispensed automatically or manually and in accordance with all applicable health laws.

(c) It shall be the duty of state agency administrators to negotiate and cooperate in good faith to accomplish the purpose of this subchapter to ensure that vending facilities operated on state property provide employment opportunities for the blind. Upon request of the licensing agency, state agency administrators shall prescribe regulations designed both to assure that these facilities benefit the blind and to assure preference for licensed blind operators.

History. Acts 1969, No. 201, §§ 1, 2, 9; A.S.A. 1947, §§ 80-2573, 80-2574, 80-2581.

Cross References. Preference for licensed blind vendors, vocational-technical schools, § 6-53-106.

22-3-1304. License required to operate facility.

No blind person may operate a vending facility, including any vending machine or other coin-operated device, on state property unless licensed to do so by the licensing agency.

History. Acts 1969, No. 201, § 4; A.S.A. 1947, § 80-2576.

22-3-1305. Issuance of licenses.

(a) The licensing agency shall issue licenses to operate vending facilities on state property to blind persons who are in need of employment and who are capable of efficiently operating the vending facility in a manner resulting in reasonable satisfaction for all parties concerned.

(b) No blind person shall be issued a license as an operator until adequate training has been provided by the licensing agency.

(c) The license is to be issued for an indefinite period of time and may be terminated by the licensing agency for just cause.

(d) The license shall be issued to qualified blind individuals without regard to race, color, or national origin.

History. Acts 1969, No. 201, § 5; A.S.A. 1947, § 80-2577.

22-3-1306. Duties of licensing agency upon request for vending facility.

Upon written or verbal request from a state agency administrator that a vending facility is desired on state property, or upon its own initiative, the licensing agency shall:

(1) Survey the property, blueprints, plans, or other available information to determine if the installation of a vending facility would be feasible and profitable and notify the state agency administrator as to the plans of the licensing agency in regard to developing the vending facility; in new construction, the survey shall be conducted before construction contracts are awarded;

(2) Provide adequate initial inventory and stocks to make vending facilities operational and provide and install proper equipment and fixtures for all regular vending facilities; and

(3) Supervise the overall installation of equipment for the vending facility and supervise the blind licensed operator in the day-to-day operation and management of the vending facility to ensure compliance with the policies and procedures set down by mutual agreement between the licensing agency and the state agency administrator for whom the vending facility is to be provided.

History. Acts 1969, No. 201, § 3;
A.S.A. 1947, § 80-2575.

22-3-1307. Selection of location — Provision of utilities, space, and services.

(a) The state agency administrators shall cooperate with the licensing agency in the selection of a suitable location for vending facilities and shall provide proper space, plumbing, lighting, and electrical outlets for the vending facility in the original planning and construction or in the alteration and renovation of present state property.

(b) The state agency administrators shall provide necessary utilities, janitorial service, and garbage disposal for the operation of the vending facility.

(c) Space for all vending facilities and their operational utility cost shall be provided rent-free by the state agency.

History. Acts 1969, No. 201, § 8;
A.S.A. 1947, § 80-2580.

22-3-1308. Property unable to support vending facility — Coin-operated machines.

(a) State agency administrators of state property where the total number of persons using the property daily would produce insufficient profits, as determined by the licensing agency, to support a vending facility and a living wage for a blind person shall grant a preference to the licensing agency in securing proper coin-operated vending machines for the state property if the property houses or serves fifty (50) persons or more.

(b) Profits from these coin-operated vending machines shall accrue to the Arkansas Vending Stand Program for the Blind to be used in the vending facility program for the blind under this subchapter.

History. Acts 1969, No. 201, § 7;
A.S.A. 1947, § 80-2579.

22-3-1309. Vending facilities for property housing or serving fifty (50) or more persons.

(a) In the design, construction, alteration, or renovation of state property housing or serving fifty (50) persons or more, there shall be included a satisfactory site or sites with space and electrical and plumbing outlets suitable for the location and operation of a vending facility. State property housing or serving fifty (50) persons or more shall include any space or building rented, leased, or otherwise acquired for use by any department, agency, or instrumentality of the state.

(b) The licensing agency shall, before the letting of the contract, survey plans or blueprints in accordance with § 22-3-1306(1).

(c)(1) The vending facility shall be operated by a blind person if sufficient profit potential is available to produce a living wage.

(2) If sufficient profit potential is not available, coin-operated vending machines may be installed in the site with the profits accruing to the Arkansas Vending Stand Program for the Blind.

(d) In new construction, major alteration, or renovation of state property where, in the opinion of the state agency administrator, complete meal-type food service or cafeteria service is necessary, the heavy equipment necessary for the preparation, cooking, preserving, and serving of the food shall be furnished and installed as part of the overall construction, alteration, or renovation cost by the state agency.

History. Acts 1969, No. 201, § 10;
A.S.A. 1947, § 80-2582.

22-3-1310. Existing vending facilities operated by blind persons.

(a) On state property where a vending facility is presently being operated by a blind licensed operator and before any additional or different provisions or arrangements are made for the sale or dispensing of articles or services of the type enumerated in § 22-3-1303(b), the licensing agency shall be given an opportunity to determine if the articles or services might be sold or dispensed in a manner designed to provide additional income or employment opportunities for the blind through the licensing agency's program.

(b) The responsibility for securing proper coin-operated vending machines or other vending facilities for the property shall be with the licensing agency, upon request by the state agency administrator.

History. Acts 1969, No. 201, § 6;
A.S.A. 1947, § 80-2578.

22-3-1311. Termination of contracts with sighted vendors.

On state property where vending facilities are being operated by those other than the blind, when the present contract or agreement expires or is terminated for any reason or when a change in the present vending facility is imminent, the future planned vending facility for such state property shall be covered by this subchapter, and state agency administrators shall contact the licensing agency to assure preference for the blind. Provided, however, leases executed under § 22-2-114 prior to June 1, 1999, shall not be considered a contract or agreement within this subchapter if the property is owned by the Arkansas Building Authority.

History. Acts 1969, No. 201, § 11;
A.S.A. 1947, § 80-2583; Acts 1999, No. 750, § 1.

Amendments. The 1999 amendment added the proviso; and made stylistic changes.

22-3-1312. Maintenance of physical facilities.

The Division of Services for the Blind of the Department of Human Services shall retain a portion of the proceeds derived from the vending stand program to be used for the benefit of maintaining the physical facilities of the vending stand program. The expenditures shall be limited to renovation of existing space, replacement of furniture or equipment, repairs, and other expenses necessary to maintain the vending stand program.

History. Acts 1987, No. 1049, § 5.

A.C.R.C. Notes. References to “this subchapter” in §§ 22-3-1301 — 22-3-1311

may not apply to this section which was enacted subsequently.

22-3-1313. Food service training program — Vending facility.

- (a) Should a state agency operate or develop as an integral part of its student program a food service training program, the state agency administrator or governing board of the state-supported facility shall notify the licensing agency of the program change.
- (b) The licensing agency shall contract with the state agency administrator or governing board of the state-supported facility for any continuance of the vending facility located at the state agency. Such continuance shall provide for the existence of both the food service student training program and the vending facility, if possible. The state licensing agency shall determine the feasibility of such continuance.

History. Acts 1991, No. 1022, § 1.

SUBCHAPTER 14 — STATE AGENCIES FACILITIES ACQUISITION ACT

SECTION.	SECTION.
22-3-1401. Title.	22-3-1410. Contract between Arkansas Development Finance Authority and holders and owners of bonds.
22-3-1402. Construction.	22-3-1411. Bonds exempt from tax.
22-3-1403. Definitions.	22-3-1412. Deposit of bond proceeds.
22-3-1404. Powers.	22-3-1413. Refunding bonds.
22-3-1405. Duties.	22-3-1414. Bondholder rights.
22-3-1406. [Repealed.]	22-3-1415. Supervision and management of buildings and facilities.
22-3-1407. Revenue bonds.	22-3-1416. Liability.
22-3-1408. Required statement on bond — Lien and pledge to secure bonds.	
22-3-1409. Pledge of revenues to secure bonds.	

Effective Dates. Acts 1993, No. 829, § 6: Apr. 1, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that absence of authority for State Building Services to construct ancillary facilities to enhance the utilization of facilities now used for

housing state agencies prevents the effecting of substantial savings and economies in housing state agencies which can only be alleviated by the passage of this act. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the

public peace, health, and safety shall be in full force and effect from and after its passage and approval."

22-3-1401. Title.

This subchapter shall be known and cited as the "State Agencies Facilities Acquisition Act of 1991".

History. Acts 1991, No. 1173, § 1.

22-3-1402. Construction.

(a) This subchapter shall be construed liberally.

(b) The enumeration of any object, purpose, power, manner, method, and thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, and things.

History. Acts 1991, No. 1173, §§ 4, 15, 16; 1993, No. 829, § 1; 1999, No. 1182, § 1.
Amendments. The 1999 amendment deleted former (c).

22-3-1403. Definitions.

Whenever used in this subchapter:

(1) "Agency" or "state agency" means any agency, board, office, commission, department, division, or institution of the State of Arkansas;

(2) "Arkansas Building Authority" means the public agency known as Arkansas Building Authority and the Arkansas Building Authority Council, as established under § 22-2-101 et seq.;

(3) "Authority" means the Arkansas Development Finance Authority created pursuant to § 15-5-101 et seq.;

(4) "Bonds" or "revenue bonds" means any bonds, notes, debentures, interim certificates, grant and revenue anticipation notes, interest in a lease, lease certificates of participation, or evidences of indebtedness, whether or not the interest on them is subject to federal income taxation; and

(5) "Construct" means to acquire, construct, reconstruct, remodel, install, and equip any lands, buildings, structures, improvements, or other property, real, personal, or mixed, useful in connection therewith and to make other necessary expenditures in connection therewith by such methods and in such manner as Arkansas State Building Services shall determine to be necessary or desirable to accomplish the powers, purposes, and authority set forth in this subchapter.

History. Acts 1991, No. 1173, § 2; 1999, No. 1182, § 2.

Amendments. The 1999 amendment substituted "therewith" for "with build- ings and facilities acquired under this subchapter" in (4); and made stylistic changes.

22-3-1404. Powers.

In addition to the purposes, powers, and authority set forth elsewhere in this subchapter or in other laws, Arkansas Building Authority is hereby authorized and empowered to:

(1) Acquire, construct, and equip buildings or by purchase, exchange, barter, gift, long-term lease, or other means, buildings and facilities to house state agencies;

(2) Exercise the power of eminent domain within Pulaski County only for the purpose of acquiring buildings and facilities and to otherwise carry out the purposes and intent of this subchapter, with such power to be exercised in the manner provided in § 22-2-109;

(3) Provide for the housing of state agencies in the buildings and facilities so acquired or constructed to the extent that space and facilities are available for such purpose, under such terms and conditions, and for such rentals and charges, as Arkansas Building Authority may determine;

(4) Acquire, construct, or cause to be constructed parking facilities, storage facilities, warehouses, garages, and other ancillary and related facilities to serve the facility;

(5) Purchase, lease, or rent and receive bequests or donations of or otherwise acquire, sell, trade, or barter any property, real, personal, or mixed, and convert such property into money or other property;

(6) Contract and be contracted with;

(7) Apply for, receive, accept, and use any moneys and property from the United States Government, any agency, state, governmental body, political subdivision, public or private organization or corporation of any nature, or any individual; and

(8) Take such other actions not inconsistent with law as may be necessary or desirable to carry out the powers, purposes, and authority as set forth in this section in accordance with the duly promulgated policies of the Arkansas Building Authority Council.

History. Acts 1991, No. 1173, § 3; 1999, No. 1182, § 3.

Amendments. The 1999 amendment rewrote (1); inserted “within Pulaski County only” in (2); in (3), substituted

“Provide” for “Arrange” and inserted “so acquired or constructed”; inserted “storage facilities, warehouses, garages, and other ancillary and related facilities” in (4); and made stylistic changes.

22-3-1405. Duties.

In addition to the purposes, powers, and authority set forth elsewhere in this subchapter or in other laws, in connection with the construction and equipping of buildings and facilities in Little Rock, Arkansas, to house state agencies, the Arkansas Building Authority is hereby authorized to:

(1) Obtain the necessary funds for accomplishing the purposes set forth in this subchapter from any source or sources, including, without limitation, the proceeds of revenue bonds or lease financings as autho-

rized herein, and other funds as may be appropriated or may be available therefor; and

(2) Contract and be contracted with; and

(3) Invest and reinvest any of the proceeds of such revenue bonds as provided in such authorizing resolution or trust indenture, hereinafter authorized; and

(4) Take such other actions not inconsistent with law as may be necessary or desirable to carry out the powers, purposes, and authority set forth herein, in accordance with the duly promulgated policies of the Arkansas Building Authority Council as authorized by law.

History. Acts 1991, No. 1173, § 3.

22-3-1406. [Repealed.]

Publisher's Notes. This section, concerning limits on total cost of an acquisition, was repealed by Acts 1999, No. 1182,

§ 4. The section was derived from Acts 1991, No. 1173, § 4.

22-3-1407. Revenue bonds.

(a) Pursuant to the intention of the General Assembly expressed in § 15-5-303, the Arkansas Development Finance Authority, in cooperation with Arkansas Building Authority, is hereby authorized and empowered to issue revenue bonds at one (1) time or from time to time, and to use the proceeds thereof for defraying the costs of accomplishing all or part of the powers, purposes, and authorities set forth in this subchapter and all expenses incidental thereto, including, without limitation, expenses for the operation and maintenance of such facilities pending completion of the construction, repair, remodeling, or renovation, paying the expenses of authorizing and issuing the bonds, establishing a debt service reserve to secure the payment of the bonds, if the authority deems such desirable, and making provision for the payment of debt service on the bonds, including fees of trustees and paying agents, until revenues for the payment thereof are available.

(b) The bonds outstanding under this subchapter may be in such principal amount as the Arkansas Development Finance Authority and Arkansas Building Authority shall determine to be necessary for the accomplishment of the purposes of this subchapter.

(c) The bonds shall be authorized, shall be sold by such means, shall bear such rate or rates of interest, and shall be executed and delivered in such manner as the Arkansas Development Finance Authority may determine pursuant to the provisions of § 15-5-301 et seq.

(d)(1) Arkansas Development Finance Authority is authorized to enter into such authorizing resolutions and trust indentures as it deems necessary to secure the revenue bonds.

(2) No member of Arkansas Development Finance Authority shall be personally liable on the bonds.

(e) Nothing in the provisions of this subchapter shall be deemed to remove, modify, or amend § 15-5-303.

History. Acts 1991, No. 1173, §§ 5, 6; inserted "construction" in (a); and made 1993, No. 829, § 2; 1999, No. 1182, § 5. stylistic changes.

Amendments. The 1999 amendment

22-3-1408. Required statement on bond — Lien and pledge to secure bonds.

(a) It shall be plainly stated on the face of each bond that it has been issued under the provisions of this subchapter, that the bonds shall be obligations only of the Arkansas Development Finance Authority, that in no event shall they constitute indebtedness for which the faith and credit of the State of Arkansas or any of its revenues, within the meaning of Arkansas Constitution, Amendment 20, are pledged.

(b)(1) The principal of, premiums, if any, interest on, and trustees' and paying agents' fees in connection with the bonds shall be secured by a lien on and pledge of and shall be payable from the pledged revenues defined in this section.

(2) The authorizing resolution or trust indenture shall set forth details of the nature and extent of the lien and pledge, including provisions for the use of surplus revenues, if any, for any other lawful purposes.

History. Acts 1991, No. 1173, § 6.

22-3-1409. Pledge of revenues to secure bonds.

(a) The principal of, premiums, if any, interest on, and trustees' and paying agents' fees in connection with all bonds issued under this subchapter shall be secured solely by a lien on and pledge of the gross revenues derived from the leasing or renting to state agencies or other tenants of space in the buildings and facilities acquired pursuant to this subchapter, and the pledging of such revenues, the pledged revenues, is hereby authorized.

(b) All pledged revenues are hereby specifically declared to be cash funds restricted in their use and dedicated and to be used solely as provided and authorized in this subchapter.

(c) Commencing the first day of the month succeeding the issuance of the bonds hereunder and so long as any bonds are outstanding hereunder, the pledged revenues shall not be deposited into the State Treasury and shall not be subject to legislative appropriation but, as and when received by the Arkansas Development Finance Authority or by any other state agency, as the case may be, shall be deposited in a bank or banks selected by the Arkansas Development Finance Authority to the credit of funds designated the "State Agencies Facilities Revenue Bond Fund", with appropriate identification for separate issues or series.

(d) So long as any bonds are outstanding hereunder, all moneys in any bond fund shall be used solely for the payment of the principal of, premiums, if any, interest on, and trustees' and paying agents' fees in connection with the bonds, with the maintenance of necessary funds

and reserves, except that the authorizing resolution or trust indenture may provide for the withdrawal, for other purposes, of surplus moneys, as defined in the authorizing resolution or trust indenture.

(e) Nothing in this section is intended to prohibit the Arkansas Development Finance Authority from investing moneys received hereunder, as provided in this subchapter.

History. Acts 1991, No. 1173, § 7.

22-3-1410. Contract between Arkansas Development Finance Authority and holders and owners of bonds.

(a) Any authorizing resolution and trust indenture shall, together with this subchapter, constitute a contract between Arkansas Development Finance Authority and the holders and registered owners of the bonds, which contract, and all covenants, agreements, and obligations therein, shall be promptly performed in strict compliance with the terms and provisions of such contract, and the covenants, agreements, and obligations of the Arkansas Building Authority may be enforced by mandamus or other appropriate proceedings at law or in equity.

(b) In this regard, in addition to other provisions referred to in this subchapter, the Arkansas Building Authority is hereby expressly authorized to include in any authorizing resolution or trust indenture assurance that, to the fullest extent possible, it will always charge, impose, and collect sufficient rentals and other revenue to meet, as due, all debt service requirements, maintain reserves at proper levels, and otherwise comply with any provisions of authorizing resolutions or trust indentures concerning revenues and bonds.

History. Acts 1991, No. 1173, § 8.

22-3-1411. Bonds exempt from tax.

Bonds issued under the provisions of this subchapter, and the interest thereon, shall be exempt from all state, county, and municipal taxes, and the exemption shall include income, inheritance, and estate taxes.

History. Acts 1991, No. 1173, § 9.

22-3-1412. Deposit of bond proceeds.

(a) Arkansas Development Finance Authority shall include necessary provisions in the authorizing resolution or trust indenture to provide for the deposit of the proceeds of the bonds pursuant to the provisions of § 15-5-209.

(b) The authority may create and establish one (1) or more special funds in such depositories and make such investment as it may designate to provide for the construction, secure the bonds, establish reserves, and fund other necessary functions or activities authorized by this subchapter.

History. Acts 1991, No. 1173, § 10.

22-3-1413. Refunding bonds.

(a) Bonds may be issued for the purpose of refunding any bonds issued under this subchapter.

(b) Refunding bonds may be issued by Arkansas Development Finance Authority pursuant to the provisions of § 15-5-314.

History. Acts 1991, No. 1173, § 11.

22-3-1414. Bondholder rights.

This subchapter shall not create any right in any bondholder for bonds issued pursuant to this subchapter, and no right of such bondholders shall arise under it, until bonds authorized by this subchapter, of the initial issue or series, shall have been sold and delivered by Arkansas Development Finance Authority.

History. Acts 1991, No. 1173, § 14.

22-3-1415. Supervision and management of buildings and facilities.

(a) Arkansas Building Authority is hereby authorized to supervise and manage buildings and other facilities constructed pursuant to the authority granted in this subchapter and to manage, maintain, and repair those buildings and facilities to provide rental space to be made available for the housing of state agencies, departments, boards, commissions, and institutions, or other tenants at such rental rates as deemed necessary:

(1) To provide sufficient funds to enable the Arkansas Development Finance Authority to meet, when due, the payment of the principal of, interest on, and trustees' and paying agents' fees in connection with all bonds issued under this subchapter;

(2) To enable Arkansas Development Finance Authority to establish and maintain such reserves and other financial obligations in regard to the bonds issued under the provisions of this subchapter, as shall be set forth in any authorizing resolution or trust indenture utilized for that purpose; and

(3) To pay the costs of utilities, insurance, janitorial supplies and services, building maintenance, upkeep, repair, and remodeling as deemed necessary, including the accumulation of reserves deemed necessary for such purposes as authorized under the provisions of this subchapter, and, in connection therewith, Arkansas Building Authority may establish one (1) or more accounts in one (1) or more banks authorized to do business in this state to accomplish those purposes.

(b) Arkansas Building Authority is hereby authorized to hire legal counsel of its choice to assist in the administration of this subchapter.

History. Acts 1991, No. 1173, § 13; substituted “constructed” for “acquired” in 1995, No. 1229, § 2; 1999, No. 1182, § 6. (a); and made stylistic changes.

Amendments. The 1999 amendment

22-3-1416. Liability.

No member of the Arkansas Building Authority Council shall be held personally liable for any act taken by the council or for any damages sustained by anyone in any contract entered into in carrying out the purposes and intent of this subchapter, unless he or she shall have acted with a corrupt intent.

History. Acts 1991, No. 1173, § 12.

SUBCHAPTER 15 — CAPITOL BUILDING PARKING FACILITY

SECTION.

22-3-1501. Intent.

22-3-1502. Authority to build and maintain parking deck facility.

22-3-1503. Parking regulation.

SECTION.

22-3-1504. Utility easement.

22-3-1505. Funding.

22-3-1506. Exceptions.

Effective Dates. Acts 1999, No. 1339, § 9: July 1, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly that the effectiveness of this act on July 1, 1999, is essential to the operation of the state government and that in the event of an extension of the regular session, the delay of this act beyond July 1, 1999, could work irreparable harm upon the proper administration and provision of essential governmental programs, as well as the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999.”

Acts 2001, No. 736, § 4: July 1, 2001. The emergency clause provided: “It is hereby found and determined by the Eighty-third General Assembly that the effectiveness of this act on July 1, 2001, is essential to the operation of the state government and that in the event of an extension of the regular session, the delay of this act beyond July 1, 2001, could work irreparable harm upon the proper administration of essential governmental programs, contrary to the public interest. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 2001.”

22-3-1501. Intent.

Arkansas Building Authority shall provide adequate facilities for those agencies located in the Capitol Mall area. The services provided by these agencies are varied. Parking spaces for these tenants have not kept up with current growth, thereby diminishing effective services provided by these agencies. The public access to the Capitol Mall area has been diminished by the lack of adequate parking. The construction of a parking deck facility, surface parking, and street improvements will help to alleviate such diminished services and lack of access.

History. Acts 1999, No. 1339, § 1.

22-3-1502. Authority to build and maintain parking deck facility.

(a)(1) Any other provision of law to the contrary notwithstanding, Arkansas Building Authority is hereby authorized to construct, manage, and maintain parking deck facilities, surface parking, and street improvements, called in this subchapter the “parking facilities”, in the area described in § 22-3-302(a).

(2)(A) The authority shall not be responsible for maintaining or assigning parking spaces designated for use by constitutional officers or the General Assembly.

(B) Provided, however, that if parking spaces in the parking facilities described in this subchapter are to be used by constitutional officers or the General Assembly, the charges for the parking spaces shall be on the same terms accorded to other state agencies, employees, and the public.

(b) In connection with management of parking facilities, the authority may contract with private persons for management services in the manner and for periods of time as the authority shall determine to be necessary for the satisfactory operation thereof.

History. Acts 1999, No. 1339, § 2;
2001, No. 736, § 1.

Amendments. The 2001 amendment
rewrote this section.

22-3-1503. Parking regulation.

The Arkansas Building Authority shall develop parking regulations which will maintain equitable parking among the state agency tenants in the area described in § 22-3-1501 and for the public and may establish reasonable rental or other charges for parking therein. The State Capitol Police shall provide the necessary traffic patrols and policing of the parking facility.

History. Acts 1999, No. 1339, § 3.

22-3-1504. Utility easement.

The Arkansas Building Authority, on behalf of the State of Arkansas, is hereby granted an easement or license over the State Capitol Building, the various buildings on the State Capitol grounds, and the State Capitol grounds for the purpose of installing or relocating utilities, connecting the facility to an existing structure, and such other purposes as are necessary and consistent with this project as authorized by this subchapter.

History. Acts 1999, No. 1339, § 4.

22-3-1505. Funding.

(a)(1) The Arkansas Building Authority is authorized and empowered to obtain the necessary funds for accomplishing its powers, purposes, and authority from any source or sources necessary and consistent with this subchapter, including, without limitation, contracting with the Arkansas Development Finance Authority to provide for the issuance of bonds by the Arkansas Development Finance Authority in accordance with the State Agencies Facilities Acquisition Act of 1991, § 22-3-1401 et seq.

(A) For the purpose of securing bonds issued pursuant to the State Agencies Facilities Acquisition Act of 1991, § 22-3-1401 et seq., the Arkansas Building Authority is authorized hereby to grant to the Arkansas Development Finance Authority, on behalf of the State of Arkansas, one (1) or more leasehold interests, each of which shall be for a term not to exceed fifty (50) years from the date of the grant, in a part of the State Capitol grounds as shall be determined by the Arkansas Building Authority to be a suitable site for the location of parking facilities.

(B) Any leasehold interest granted to the Arkansas Development Finance Authority may be assigned or mortgaged from time to time by the Arkansas Development Finance Authority to secure bonds of the Arkansas Development Finance Authority for the construction, extension, renovation, or repair of parking facilities, but any assignment or mortgage shall include in each case a provision that the assignment or mortgage shall terminate upon full and final payment of the particular bonds secured thereby and the discharge of the obligations of the Arkansas Development Finance Authority or of the Arkansas Building Authority related to the bonds secured thereby.

(C) Any leasehold interest granted also may include any easements over, above, or below the State Capitol grounds for vehicular or utility access to and from the parking facilities as the Arkansas Building Authority shall determine to be necessary.

(3) In the event of a default on any bonds, the assignee of the leasehold interest securing the bonds may occupy and control the parking facilities related thereto for the term of the leasehold interest and may impose fees, charges, licenses, or rents as it may determine without obtaining the approval of any agency or instrumentality of the State of Arkansas.

(b) All fees, charges, licenses, rents, or other income of any nature derived from the operation of the parking facilities, or provided for that purpose to the Arkansas Building Authority from whatever source, are hereby specifically declared to be cash funds restricted in their use and are dedicated and shall be used solely as provided and authorized in this subchapter.

(c)(1) Commencing on the first of the month following the first issuance of the bonds of the Arkansas Development Finance Authority pursuant to the State Agencies Facilities Acquisition Act of 1991,

§ 22-3-1401 et seq., and for so long as any of the bonds are outstanding for the purposes authorized by this subchapter, the revenues shall not be deposited into the State Treasury and shall not be subject to legislative appropriation but, as and when received by the Arkansas Building Authority, the Arkansas Development Finance Authority or a trustee or agent acting on behalf of either the Arkansas Building Authority or the Arkansas Development Finance Authority, as the case may be, shall be deposited in a bank or banks selected by the Arkansas Building Authority to the credit of a fund designated as the “Arkansas Building Authority Parking Facilities Revenue Bond Fund”, with appropriate accounts therein for separate bond issues or series, where applicable.

(2) Notwithstanding any other provision of law, moneys in the fund may be pledged from time to time to secure the payment of bonds of the Arkansas Development Finance Authority issued to finance the parking facilities and may be deposited and invested by or on behalf of Arkansas Building Authority in the manner as may be directed or required by a bond resolution or trust indenture related to any bond financing of the Arkansas Development Finance Authority.

History. Acts 1999, No. 1339, § 5; 2001, No. 736, § 2.

Amendments. The 2001 amendment rewrote this section.

22-3-1506. Exceptions.

The provisions of § 22-3-301 et seq., pertaining to the Capitol Zoning District Commission, § 22-3-401 et seq., pertaining to the Capitol Parking Control Committee, § 22-3-501 et seq., pertaining to the Capitol Arts and Grounds Commission, and § 22-3-202, pertaining to the Secretary of State, or any other provision of law inconsistent with the intent of this subchapter shall not be applicable to the Arkansas Building Authority in connection with the parking facilities contemplated by this subchapter, and no filings, consents, or approvals shall be required from any agency of the state prior to the construction, renovation, or repair of parking facilities or concerning the operations thereof.

History. Acts 2001, No. 736, § 3.

SUBCHAPTER 16 — MEDAL OF HONOR MONUMENT

SECTION.

22-3-1601 — 22-3-1603. [Repealed.]

22-3-1601 — 22-3-1603. [Repealed.]

A.C.R.C. Notes. Acts 2001, No. 783, § 1, provided: “The following are hereby abolished: (1) The Advisory Committee on Accountability; (2) The Crowley’s Ridge Trail Commission; (3) The Advisory Coun-

cil to the Arkansas Natural Heritage Commission of the Department of Arkansas Heritage; (4) The Advisory Board for Director of the Arkansas High Technology Training Center; (5) The Low-Level Radio-

active Waste Advisory Group; (6) The Arkansas Medal of Honor Commission; (7) The Quality Management Board; and (8) The Arkansas Task Force on Timber Land Assessment.”

Publisher's Notes. This subchapter, concerning the Medal of Honor Monu-

ment, was repealed by Acts 2001, No. 783, § 2. The subchapter was derived from the following sources:

22-3-1601. Acts 1999, No. 564, § 1.

22-3-1602. Acts 1999, No. 564, § 2.

22-3-1603. Acts 1999, No. 564, § 3.

SUBCHAPTER 17 — FIREFIGHTERS MONUMENT

SECTION.

22-3-1701. Findings and purpose.

22-3-1702. Authorization.

22-3-1703. Design and location.

SECTION.

22-3-1704. Funding.

22-3-1705. Commencement of construction.

Cross References. Capitol Arts and Grounds Commission, §§ 22-3-501 et seq.

Effective Dates. Acts 2001, No. 504, § 6: March 1, 2001. The emergency clause provided: “It is found and determined by the General Assembly that a delay in the effective date of this act would cause unnecessary delay in raising funds for the materials, construction, and maintenance of the monument recognizing and honoring our fallen firefighters; and that this project should be undertaken as soon as possible. Therefore, an emergency is de-

clared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

22-3-1701. Findings and purpose.

(a) It is found and determined by the General Assembly that:

(1) Many Arkansans serve each year as full-time firefighters, volunteer firefighters, forestry firefighters, and training academy firefighters;

(2) Firefighters in many communities serve their citizens as emergency medical technicians, hazardous material specialists, and bomb technicians and serve in numerous rescue emergencies;

(3) Upon occasion, fire or disaster claims the life of a firefighter in the course of his or her duties; and

(4) Arkansas firefighters have not received the recognition and honor deserved for service to their fellow citizens.

(b) In recognition and appreciation of Arkansas' fallen firefighters, an appropriate monument should be constructed and maintained on the State Capitol grounds.

History. Acts 2001, No. 504, § 1.

22-3-1702. Authorization.

The Secretary of State is authorized to assist and coordinate with the Arkansas Fallen Firefighters’ Memorial Board in the construction of a monument on the grounds of the State Capitol honoring:

- (1) Arkansans and other firefighters killed in Arkansas while acting in their capacity as firefighters; and
- (2) Any Arkansas firefighter killed outside the State of Arkansas while serving in the capacity of a firefighter.

History. Acts 2001, No. 504, § 2.

22-3-1703. Design and location.

The design of the monument and the location of the monument on the State Capitol grounds shall be approved by the Arkansas Fallen Firefighters’ Memorial Board and the Capitol Arts and Grounds Commission.

History. Acts 2001, No. 504, § 3.

22-3-1704. Funding.

- (a) The State of Arkansas shall not be obligated to fund the Arkansas Fallen Firefighters’ Memorial.
- (b) The Arkansas Fallen Firefighters’ Memorial Board shall raise all funds necessary for materials, construction, and maintenance of the monument.
- (c) The board shall comply with the rules and regulations of the Capitol Arts and Grounds Commission regarding creation of a maintenance fund.

History. Acts 2001, No. 504, § 4.

22-3-1705. Commencement of construction.

Construction of the Arkansas Fallen Firefighters’ Memorial shall commence only after all requirements of the Capitol Arts and Grounds Commission are met.

History. Acts 2001, No. 504, § 5.

CHAPTER 4
PARKS AND RECREATION AREAS

- SUBCHAPTER.
- 1. GENERAL PROVISIONS.
 - 2. CLASSIFICATION.
 - 3. REVENUE BONDS AND OTHER FUNDS.
 - 4. ARKANSAS TRAILS SYSTEM.
 - 5. PROPERTY DEDICATED FOR PUBLIC PARKS.
 - 6. CROWLEY’S RIDGE TRAIL COMMISSION. [REPEALED.]

RESEARCH REFERENCES

Am. Jur. 59 Am. Jur. 2d, Parks, § 3 et seq.

Ark. L. Rev. Acquisition of Public Rec-

reational Access to Privately-Owned Property: Devices, Problems, and Incentives, 29 Ark. L. Rev. 514.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

22-4-101. Definitions.

22-4-102. Control of state parks and recreational areas.

22-4-103. State Parks, Recreation, and Travel Commission — Powers generally.

22-4-104. State Parks, Recreation, and Travel Commission — Rule-making power — Penalty.

22-4-105. Department of Parks and Tourism — Leasing powers.

22-4-106. Establishing and acquiring

SECTION.

property for state parks — Procedure generally.

22-4-107. Reservation of parks for public use.

22-4-108. Sale or exchange of lands.

22-4-109. Acquisition of land for hiking trails.

22-4-110. Expenditures and contributions of counties, cities, or towns.

22-4-111. Annual report of State Parks, Recreation, and Travel Commission.

Publisher's Notes. Acts 1971, No. 38, § 7, transferred, by a type 4 transfer, the State Parks, Recreation, and Travel Commission, together with its functions, powers, and duties, to the Department of Parks and Tourism. Pursuant to the transfer, the Governor is authorized, under § 25-2-107, to give written approval of the rules and regulations promulgated by the State Parks, Recreation, and Travel Commission as well as approval of the commission's nomination for Director of the Department of Parks and Tourism, who shall serve at the pleasure of the Governor.

Cross References. State Parks, Recreation, and Travel Commission, § 15-11-201 et seq.

Effective Dates. Acts 1937, No. 170, § 15: Mar. 3, 1937. Emergency clause provided: "Whereas, the conservation and promotion of the human and natural resources is recognized as a public right and duty; and

"Whereas, the General Assembly deems the acquiring and maintaining of an ade-

quate state park system as necessary to the well-being of the people of this state; and

"Whereas, it is found and ascertained that the welfare of the people of this state is dependent upon the provisions of this act, an emergency is hereby declared to exist, and this act shall become effective and be in force from and after its passage and approval."

Acts 1977, No. 842, § 11: Mar. 24, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-First General Assembly of the State of Arkansas that various Arkansas State parks are in dire need of construction, reconstruction, repairing, improving and equipping of facilities and that the immediate passage of this act is necessary to continue funds and appropriations for initiating said projects. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

22-4-101. Definitions.

As used in this subchapter:

(1) "Land" means upland; land under water; the water of any lake, pond, or stream; any and all incorporeal hereditaments; and every estate, interest, and right, either legal or equitable, in land or water, including terms for years, liens thereon by way of judgment, mortgage, or otherwise, and all claims for damages to such property; and

(2) "Park" means any area within the state which by reason of location, natural features, scenic beauty, or historical interest possesses distinctive physical, aesthetic, intellectual, creative, and social values.

History. Acts 1937, No. 170, § 10; Pope's Dig., § 12316; A.S.A. 1947, § 9-606.

CASE NOTES

ANALYSIS

Constitutionality.
Park.

Constitutionality.

Sections 22-4-101 — 22-4-105, 22-4-107, 22-4-108, 22-4-110, and 22-4-111 are not unconstitutional. *Fairbanks v. Sheffield*, 226 Ark. 703, 292 S.W.2d 82 (1956).

Park.

Land that was to be condemned for use as a presidential library, archives, or complex fit the definition of park set forth in this section, especially since that term was construed broadly. *Pfeifer v. City of Little Rock*, 346 Ark. 449, 57 S.W.3d 714 (2001).

22-4-102. Control of state parks and recreational areas.

All parks and recreational areas acquired by the state shall constitute the state parks system and shall be under the immediate control and management of the State Parks, Recreation, and Travel Commission.

History. Acts 1937, No. 170, § 6; Pope's Dig., § 12312; A.S.A. 1947, § 9-601.

Publisher's Notes. The following parks were established by the acts indicated:

Arkansas Post National Memorial. Acts 1981, Nos. 243 and 263.

Hampson Museum State Park. Acts 1957, No. 564.

Hurricane Creek State Park. Acts 1963, No. 550.

Herman Davis Memorial Park. Acts 1953, No. 369.

Jacksonport State Park. Acts 1963, No. 554.

James Sevier Conway Historical Monument. Acts 1975, No. 329.

Jenkins Ferry Battleground State Park. Acts 1961, No. 10.

Louisiana Purchase State Park. Acts 1961, No. 174.

Marks' Mills Battleground. Acts 1961, No. 164.

Moro Bay State Park. Acts 1967, No. 425.

Mt. Magazine State Park. Acts 1983, No. 884.

Old Carrollton State Park. Acts 1959, No. 79.

Parkin Indian Mound State Park. Acts 1967, No. 399.

Parnell Springs State Park. Acts 1963, No. 553.

Pea Ridge National Park. Acts 1957, No. 192.

Pioneer Washington State Historical Monument. Acts 1965, No. 396.

Poinsett State Park. Acts 1963, No. 551.

Poison Springs Battleground State Park. Acts 1961, No. 182.

Sans Souci Landing. Acts 1967, No. 438.

Upper Strawberry River Watershed Area. Acts 1975, No. 685.

White Oak State Park. Acts 1969, No. 192.

Woolley Hollow Recreation Center. Acts 1971, No. 378.

Acts 1937, No. 170, established the Arkansas State Parks Commission. Acts 1945, No. 138, § 3, abolished the commission and transferred its duties to the Arkansas Resources and Development Commission, to be exercised by the Division of

Forestry and Parks of the commission. The division was abolished and its duties relating to state parks were transferred to the State Forestry and Parks Commission by Acts 1953, No. 42, and thereafter transferred to the Publicity and Parks Commission by Acts 1955, No. 330. The Publicity and Parks Commission was redesignated the State Parks, Recreation and Travel Commission by Acts 1969, No. 85. The commission subsequently was transferred, together with its functions, powers, and duties, by a type 4 transfer to the State Department of Parks and Tourism pursuant to Acts 1971, No. 38.

CASE NOTES

Constitutionality.

Sections 22-4-101 — 22-4-105, 22-4-107, 22-4-108, 22-4-110, and 22-4-111 are not unconstitutional. *Fairbanks v. Sheffield*, 226 Ark. 703, 292 S.W.2d 82 (1956).

Cited: *Scott v. State*, 230 Ark. 766, 326 S.W.2d 812 (1959).

22-4-103. State Parks, Recreation, and Travel Commission — Powers generally.

The State Parks, Recreation, and Travel Commission, in addition to the other powers granted in this chapter, shall have the sole authority:

(1)(A) To acquire in the name of the state by purchase, lease, or agreement such land within the state as it may deem necessary or proper for the extension, development, or improvement of the state park system.

(B) If the department is unable to agree with the owner of the land, or if by legal incapacity or absence of the owner, no agreement can be made for the purchase, the land may be acquired by condemnation proceedings instituted in the name of the state in the manner provided by law for the condemnation of property for public purposes.

(C) No land shall be taken or contracted to be taken for an amount beyond the sum available therefor, and no tender shall be required for property taken by condemnation proceedings until the amount required to be paid is ascertained by the court sitting as a jury for the purpose of determining the value of the property condemned;

(2) To take in its discretion in fee or otherwise, by gift or devise, land for state park and recreational purposes and to receive gifts, bequests, or contributions of money or other property to be used in extending, improving, or maintaining the state parks system;

(3) To apply to the Commissioner of State Lands for the transfer of any state-owned land or land the title to which has reverted to the state by reason of tax delinquency and which is deemed by the Department of Parks and Tourism as suitable and desirable for park and recreational purposes. The Commissioner of State Lands is authorized and

directed to make such transfers which shall operate as an appropriation of the land for park and recreational purposes forever and shall be a bar to any grants by the state of the land so transferred or of any interest in it for any purpose whatsoever;

(4) To accept transfers and conveyances of rights and titles vested in the United States Government to land and buildings within this state for state park and recreational purposes or to lease them, under such conditions as the Government of the United States may impose;

(5) To make expenditures from funds available for the care, supervision, improvement, development, and protection of the state parks system;

(6) To remove or cause to be removed and to sell wood, timber, rocks, stone, or other products from the parks. All moneys received from the sale of those items shall be paid into the general fund of the State Treasury;

(7) To cooperate with counties, municipalities, and other political subdivisions of the state, with other states, and with the federal government in matters relating to planning, establishing, developing, improving, or maintaining any park, parkway, or recreational area;

(8) To appoint local and regional park and recreational councils to consider, study, and advise in the work of the commission for the extension, development, use, and maintenance of the parks for which appointed. The Chair of the State Parks, Recreation, and Travel Commission and the Director of the Department of Parks and Tourism shall be ex officio members of all councils so appointed; and

(9) To confer on employees of the department the full authority of peace officers for all land under its jurisdiction.

History. Acts 1937, No. 170, § 6;
Pope's Dig., § 12312; A.S.A. 1947, § 9-601.

CASE NOTES

Constitutionality.

Sections 22-4-101 — 22-4-105, 22-4-107, 22-4-108, 22-4-110, and 22-4-111 are not unconstitutional. *Fairbanks v. Sheffield*, 226 Ark. 703, 292 S.W.2d 82 (1956).

Cited: *Scott v. State*, 230 Ark. 766, 326 S.W.2d 812 (1959).

22-4-104. State Parks, Recreation, and Travel Commission — Rule-making power — Penalty.

(a) The State Parks, Recreation, and Travel Commission shall have the power to establish and alter rules and regulations governing the use and protection of the state parks system and the property thereon and to preserve the peace therein.

(b) Any person who violates any rule or regulation established under subsection (a) of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred

dollars (\$100) or imprisonment for not more than thirty (30) days, or both.

History. Acts 1937, No. 170, § 6; Pope's Dig., § 12312; A.S.A. 1947, § 9-601.

Publisher's Notes. As to approval of rules and regulations, see Publisher's Notes following subchapter analysis.

CASE NOTES

Constitutionality.

Sections 22-4-101 — 22-4-105, 22-4-107, 22-4-108, 22-4-110, and 22-4-111 are not unconstitutional. *Fairbanks v. Sheffield*, 226 Ark. 703, 292 S.W.2d 82 (1956).

Cited: *Scott v. State*, 230 Ark. 766, 326 S.W.2d 812 (1959).

22-4-105. Department of Parks and Tourism — Leasing powers.

(a) The Department of Parks and Tourism, in addition to any other powers granted in this chapter, shall have the sole authority to lease state park lands to private companies and to authorize the lessees to construct, maintain, and operate overnight accommodation facilities, recreational facilities, and the other major facilities which the department may deem appropriate.

(b) Any lease executed by the department shall include provisions satisfactory to the department regarding the quality of services and facilities to be furnished by the lessee and the charges to be made therefor, or provisions reserving to the department the right to monitor and inspect the activities and facilities of the lessee to assure that the quality of the services and facilities provided by the lessee and the prices charged therefor are appropriate.

(c) Failure of any lessee to comply with the terms of a lease or the reasonable requirements of the department regarding the quality of services and facilities provided by the lessee or the charges to be made therefor shall be grounds for the department to terminate the lease.

(d) Each lease shall be for a term not to exceed twenty-five (25) years, and the lessee may be permitted to renew the lease for an additional period not to exceed twenty-five (25) years.

(e) No long-term lease shall be entered into by the department unless it is approved by the State Parks, Recreation, and Travel Commission and the Legislative Council.

History. Acts 1937, No. 170, § 6; Pope's Dig., § 12312; 1977, No. 253, § 1; A.S.A. 1947, § 9-601.

CASE NOTES

Constitutionality.

Sections 22-4-101 — 22-4-105, 22-4-107, 22-4-108, 22-4-110, and 22-4-111 are not unconstitutional. *Fairbanks v. Sheffield*, 226 Ark. 703, 292 S.W.2d 82 (1956).

Cited: *Scott v. State*, 230 Ark. 766, 326 S.W.2d 812 (1959).

22-4-106. Establishing and acquiring property for state parks — Procedure generally.

(a) The Department of Parks and Tourism and the State Parks, Recreation, and Travel Commission are directed to consult with and seek the advice of the Governor, the Director of the Department of Finance and Administration, and the Legislative Council before establishing and acquiring properties for new state parks or before making acquisitions of real property for additions to or expansions of existing state parks which have not been specifically authorized or funded by the General Assembly.

(b) The advice of the Governor, the director, and the Legislative Council shall be sought in writing by the department or the commission at least sixty (60) days prior to the final approval by the commission of any formal action to establish a new state park or to make acquisitions of real property for additions to or expansions of existing state parks if the action has not previously received specific legislative authorization.

(c) If the Governor notifies the department or the commission in writing of his or her disapproval of any project, then the project shall not be undertaken unless specifically authorized by law at a subsequent legislative session.

History. Acts 1977, No. 842, § 6;
A.S.A. 1947, § 9-602.

22-4-107. Reservation of parks for public use.

(a) All parks acquired by the state shall forever be reserved and maintained by the state for the use and enjoyment of the public.

(b) It shall be the duty of the State Parks, Recreation, and Travel Commission to preserve the parks in their natural condition so far as may be consistent with their use and safety and to improve them in such manner as not to lessen their natural, scenic, historic, and wildlife values.

History. Acts 1937, No. 170, § 11;
Pope's Dig., § 12317; A.S.A. 1947, § 9-607.

CASE NOTES

Constitutionality.

Sections 22-4-101 — 22-4-105, 22-4-107, 22-4-108, 22-4-110, and 22-4-111 are not unconstitutional. *Fairbanks v. Sheffield*, 226 Ark. 703, 292 S.W.2d 82 (1956).

Cited: *Sierra Club v. Davies*, 743 F. Supp. 1334 (E.D. Ark. 1990).

22-4-108. Sale or exchange of lands.

(a) The State Parks, Recreation, and Travel Commission is given authority to exchange any lands now belonging to the state for state park purposes for other lands that are suitable for such purposes and to

sell any lands belonging to the state for state park purposes and invest the proceeds thereof in other lands suitable for such purposes, such sale or exchange to be had only with the approval of the Governor.

(b) In case of a sale or exchange of such lands, the chair and secretary of the commission are empowered to execute a deed fully conveying the interest of the state therein. The deed shall bear the endorsement of the approval of the Governor and shall not be required to be acknowledged.

(c) This authority to sell and exchange shall extend only to lands which the commission finds are unsuited for state park purposes.

History. Acts 1937, No. 170, § 14; Pope's Dig., § 12319; A.S.A. 1947, § 9-608.

CASE NOTES

Constitutionality.

Sections 22-4-101 — 22-4-105, 22-4-107, 22-4-108, 22-4-110, and 22-4-111 are not unconstitutional. *Fairbanks v. Sheffield*, 226 Ark. 703, 292 S.W.2d 82 (1956).

Cited: *Sierra Club v. Davies*, 743 F. Supp. 1334 (E.D. Ark. 1990).

22-4-109. Acquisition of land for hiking trails.

(a) The Department of Parks and Tourism is authorized to acquire, by purchase, gift, or devise, interest in real property less than fee interest, including, but not limited to, easements for the purpose of establishing trails for public hiking and for related purposes over lands contiguous to lands controlled by the department.

(b) The interest in real property less than fee interest shall be acquired solely by gift or devise from the owner of the interest or by negotiating and contracting with the owner for the interest.

(c) Under no circumstances shall the interest be acquired by the department under the power of eminent domain.

History. Acts 1973, No. 243, § 1; A.S.A. 1947, § 9-603.

22-4-110. Expenditures and contributions of counties, cities, or towns.

(a) Any county, city, or town may expend money from any funds available to aid in the purchase of land within the county which, when purchased, shall become the property of the state to be cared for and administered as a part of the state parks system, but only if the State Parks, Recreation, and Travel Commission has first agreed in writing to the acceptance of the land.

(b) Any county, city, or town may annually contribute money to the commission from any funds available to be expended in the care, improvement, and maintenance of any park within the county.

History. Acts 1937, No. 170, § 7; Pope's Dig., § 12313; A.S.A. 1947, § 9-604.

CASE NOTES

Constitutionality. unconstitutional. Fairbanks v. Sheffield, Sections 22-4-101 — 22-4-105, 22-4-107, 226 Ark. 703, 292 S.W.2d 82 (1956). 22-4-108, 22-4-110, and 22-4-111 are not

22-4-111. Annual report of State Parks, Recreation, and Travel Commission.

(a) It shall be the duty of the State Parks, Recreation, and Travel Commission, on or before the first Monday in December of each year, to prepare and present to the Governor a report showing the operations of the commission since the date of its last annual report and including a statement of all receipts and disbursements.

(b) In each annual report immediately preceding the regular session of the General Assembly, the commission shall submit an itemized estimate of moneys required to administer, manage, support, extend, repair, or permanently improve the state parks system for the ensuing two (2) years, together with any recommendations for legislative action that the commission deems proper for the better accomplishment of the purposes of this chapter.

(c) The Governor shall submit copies of the report and recommendations to the convening General Assembly, and each regular session of the General Assembly shall appropriate such funds as it may deem proper for the continuation of the work of the commission.

History. Acts 1937, No. 170, § 9; Pope's Dig., § 12315; A.S.A. 1947, § 9-605.

CASE NOTES

Constitutionality. unconstitutional. Fairbanks v. Sheffield, Sections 22-4-101 — 22-4-105, 22-4-107, 226 Ark. 703, 292 S.W.2d 82 (1956). 22-4-108, 22-4-110, and 22-4-111 are not

SUBCHAPTER 2 — CLASSIFICATION

SECTION.	SECTION.
22-4-201. Classifications of state parks.	22-4-203. Effect of classification or reclassification.
22-4-202. Reclassification of state parks.	

22-4-201. Classifications of state parks.

The State Parks, Recreation, and Travel Commission shall classify each state park into one (1) of the following classifications:

(1) Official state parks shall be those parks which the commission determines to have sufficient facilities and recreational and tourist

attractions to meet standards established by the commission for designation as a state park;

(2) State historical monuments shall be those facilities presently classified as state parks which shall be reclassified as state historical monuments because of their historical value and attractiveness with respect to the history of Arkansas and of the Southwest but which do not have facilities meeting the standards of the commission to be classified as state parks;

(3) State museums shall consist of those facilities presently classified as state parks which shall be reclassified as state museums because of the nature of the facilities and the exhibits and attractions thereof which justify classification as a state museum rather than a state park;

(4) State recreational areas shall be all other facilities now classified as state parks which do not have the facilities to justify classification as a state park under the standards established by the commission but which do offer limited or specialized recreational facilities of interest and attraction to the public; and

(5) State arboretums shall consist of those arboretums classified as state parks but not included in any other classification under this section.

History. Acts 1965, No. 37, § 2; A.S.A. 1947, § 9-610; Acts 1991, No. 1039, § 1.

Publisher's Notes. Acts 1965, No. 37, § 1, authorized the former Arkansas Publicity and Parks Commission, now the State Parks, Recreation, and Travel Commission, to make a study and review of all parks designated by law or regulation as

state parks to determine the facilities, recreational and tourist attractions, historical attractiveness of each park and such other general information as required by the commission in classifying each park in the manner provided in this subchapter.

22-4-202. Reclassification of state parks.

The State Parks, Recreation, and Travel Commission shall periodically review the classification or designation of state parks as provided in § 22-4-201 and may reclassify any park when the commission determines that the facilities, attractions, public use, or recreational values thereof justify a reclassification under standards promulgated by the commission.

History. Acts 1965, No. 37, § 3; A.S.A. 1947, § 9-611.

22-4-203. Effect of classification or reclassification.

(a) All state parks classified by the State Parks, Recreation, and Travel Commission under the provisions of § 22-4-201, or reclassified under the provisions of § 22-4-202, shall continue to be a part of the state parks system. Any reclassification shall be for the purpose of more proper classification and identification in order that the public might be better advised with respect to each facility in its selection or use thereof.

(b) Nothing in this subchapter shall affect the powers of the commission to issue revenue bonds for the improvement of any facility in the state parks system, or the pledge of revenues therefrom, regardless of classification by the commission under this subchapter.

History. Acts 1965, No. 37, § 4; A.S.A. 1947, § 9-612.

SUBCHAPTER 3 — REVENUE BONDS AND OTHER FUNDS

SECTION.

22-4-301. [Repealed.]

22-4-302. Financing authority.

22-4-303, 22-4-304. [Repealed.]

22-4-305. Authority of State Parks, Recreation, and Travel Commission to impose fees for services — Pledge of revenues from fees — Restrictions.

22-4-306. [Repealed.]

22-4-307. Bonds and property — Exemptions.

SECTION.

22-4-308, 22-4-309. [Repealed.]

22-4-310. Parks system revenues kept separate — Use of funds.

22-4-311. [Repealed.]

22-4-312. Bonds for construction of Arkansas Museum of Natural Resources.

22-4-313. Bonds for construction of lodge and cabins.

Effective Dates. Acts 1953, No. 399, § 12: approved Mar. 28, 1953. Emergency clause provided: "It is hereby found and declared that the State of Arkansas does not now have a sufficient program of State Parks and that such program is needed and should be put in force as soon as possible to the end that the people of Arkansas may have adequate recreational facilities and that residents of other states may be attracted to the state. In consequence of such facts, an emergency is hereby declared to exist, rendering this act necessary for the immediate preservation of the public peace, health and safety. This act shall therefore take effect and be in full force and effect from and after the date of its passage."

Acts 1957, No. 279, § 9: Mar. 27, 1957. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that immediate action is necessary in order to accomplish the purpose of this act and that delay will probably result in excessive interest costs on bonds issued pursuant to this act and further that moneys to be derived from the sale of such bonds are badly needed at this time in order to accomplish the purpose of this act. Therefore, an emergency is hereby declared to exist and this act

being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1970 (Ex. Sess.), No. 35, § 4: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this act. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1975, No. 225, § 26: became law without Governor's signature, Feb. 19, 1975. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public im-

provements to which this act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this act. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

Acts 1980 (1st Ex. Sess.), No. 71, § 7: Feb. 12, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that Acts 1977, No. 310, as amended, provides for the establishment of the Arkansas Oil and Brine Museum but that funds are not currently available for the construction of the Museum; that this act is designed to authorize the Parks, Recreation and Travel Commission to issue bonds for the construction of the Museum, and to pledge funds derived from a fee of twenty (20) mills per barrel levied by this act on oil produced in the state and ten (10) cents per 1,000 barrels of brine produced in this

state for the purpose of bromine extraction; that it is urgent that this act be given effect at the earliest possible date to enable the Commission to proceed with the issuance of bonds and the construction of the Museum. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 425, § 54: Mar. 11, 1981. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this state and the continued improvement of the economic conditions of her people, and that these public improvements can be accomplished only by the immediate effect of this act. Therefore, an emergency is declared to exist and this act, being necessary for the preservation of the public peace, health and safety, shall be in effect from and after its passage and approval."

CASE NOTES

Constitutionality.

Acts 1953, No. 399, creating the state park system, is not unconstitutional. Fair-

banks v. Sheffield, 226 Ark. 703, 292 S.W.2d 82 (1956).

22-4-301. [Repealed.]

Publisher's Notes. This section, concerning the supchapter as a complete authority, was repealed by Acts 2001, No.

1390, § 1. The section was derived from Acts 1957, No. 279, § 6; A.S.A. 1947, § 9-623.

22-4-302. Financing authority.

The State Parks, Recreation, and Travel Commission is authorized and empowered to obtain the necessary funds for the purpose of extending, developing, and improving the state parks system from any source or sources necessary and consistent with subchapters 1, 2, and 3 of this chapter, including, without limitation, contracting with the Arkansas Development Finance Authority to provide for the issuance of bonds by the authority in accordance with the Arkansas Development Finance Authority Act, §§ 15-5-101 et seq., § 15-5-201 et seq., and § 15-5-301 et seq.

History. Acts 1953, No. 399, § 1; 1957, No. 279, § 1; A.S.A. 1947, § 9-613; Acts 2001, No. 1390, § 2.

Publisher's Notes. Acts 1985, No. 1062, § 24, provided, in part, that the authority of the State Parks, Recreation, and Travel Commission to issue revenue bonds pursuant to Acts 1953, No. 399 was

transferred to the Arkansas Development Finance Authority and that from May 1, 1985, the issuer of revenue bonds pursuant to Acts 1953, No. 399 means the Authority.

Amendments. The 2001 amendment rewrote this section.

CASE NOTES

Constitutionality.

Constitutional Amendment 20 does not apply to bonds for which the state's faith

and credit are not pledged. *Fairbanks v. Sheffield*, 226 Ark. 703, 292 S.W.2d 82 (1956).

22-4-303, 22-4-304. [Repealed.]

Publisher's Notes. These sections, concerning the issuance and terms of bonds and the sale of bonds, were repealed by Acts 2001, No. 1390, §§ 3 and 4, respectively. The sections were derived from the following sources:

22-4-303. Acts 1953, No. 399, § 3; 1970

(Ex. Sess.), No. 35, § 1; 1975, No. 225, § 8; 1981, No. 425, § 8; A.S.A. 1947, § 9-615.

22-4-304. Acts 1953, No. 399, §§ 1, 3; 1957, No. 279, § 1; 1970 (Ex. Sess.), No. 35, § 1; 1975, No. 225, § 8; 1981, No. 425, § 8; A.S.A. 1947, §§ 9-613, 9-615.

22-4-305. Authority of State Parks, Recreation, and Travel Commission to impose fees for services — Pledge of revenues from fees — Restrictions.

(a) The State Parks, Recreation, and Travel Commission is authorized and directed to prescribe and collect reasonable fees, rates, tolls, and charges for the services, facilities, and commodities rendered by the properties and equipment of the state parks system.

(b) The authority and power of the commission includes the right to erect and operate cabins, lodges, restaurants, and other facilities and improvements for the convenience of the public and the right to erect and lease to third parties for operation such facilities and improvements upon such terms as the commission may determine.

(c)(1) The commission shall revise the rates, fees, tolls, charges, and rentals whenever necessary to ensure that the revenues therefrom, together with other available funds, shall be fully sufficient to discharge all obligations of the commission pertaining to the principal of and interest on any bonds as the principal and interest become due.

(2) The gross revenue derived by the commission from all or any part of the properties and equipment of the state parks system may be pledged to the payment of revenue bonds authorized to be issued by this subchapter even though the proceeds from a particular bond issue may be used for the development or improvement of one (1) or more, but less than all, state parks.

(d) The bonds shall not constitute an indebtedness of the commission or of the State of Arkansas within the meaning of any constitutional or statutory limitation, and this shall be so stated on the face of each bond.

History. Acts 1953, No. 399, §§ 1, 2; 1957, No. 279, §§ 1, 2; A.S.A. 1947, §§ 9-613, 9-614; Acts 2001, No. 1390, § 5.

Publisher's Notes. As to transfer of authority to issue bonds, see Publisher's Notes to § 22-4-302.

Amendments. The 2001 amendment

substituted "State Parks, Recreation, and Travel Commission" for "commission" in (a); deleted "including, without limitation, the right to enter into long-term leases running for the life of any bond issue" at the end of (b); and deleted (d)(2) and made related changes.

CASE NOTES

Constitutionality.

Constitutional Amendment 20 does not apply to bonds for which the state's faith

and credit are not pledged. *Fairbanks v. Sheffield*, 226 Ark. 703, 292 S.W.2d 82 (1956).

22-4-306. [Repealed.]

Publisher's Notes. This section, concerning remedies of bondholders, was repealed by Acts 2001, No. 1390, § 6. The

section was derived from Acts 1953, No. 399, § 4; A.S.A. 1947, § 9-616.

22-4-307. Bonds and property — Exemptions.

All of the property controlled and operated by the State Parks, Recreation, and Travel Commission and the interest on all bonds issued under this subchapter shall be exempt from taxation by the State of Arkansas or by any municipal corporation, county, or other political subdivision or taxing district of the state.

History. Acts 1953, No. 399, §§ 6, 7; 1957, No. 279, § 3; A.S.A. 1947, §§ 9-617, 9-618; Acts 2001, No. 1390, § 7.

Publisher's Notes. As to transfer of

authority to issue bonds, see Publisher's Notes to § 22-4-302.

Amendments. The 2001 amendment deleted (b) and made related changes.

CASE NOTES

ANALYSIS

Ad valorem taxation.
Commission's property.

Ad Valorem Taxation.

This section does not exempt the bonds or their interest from ad valorem taxation but merely exempts the interest on such bonds from the state income tax. *Fair-*

banks v. Sheffield, 226 Ark. 703, 292 S.W.2d 82 (1956).

Commission's Property.

The exemption of the commission's own property from taxation is clearly valid. *Fairbanks v. Sheffield*, 226 Ark. 703, 292 S.W.2d 82 (1956).

22-4-308, 22-4-309. [Repealed.]

Publisher's Notes. These sections, concerning refunding bonds and bonds as authorized investments, were repealed by Acts 2001, No. 1390, §§ 8 and 9, respectively. These sections were derived from the following sources:

22-4-308. Acts 1953, No. 399, § 9; A.S.A. 1947, § 9-620.

22-4-309. Acts 1953, No. 399, § 8; A.S.A. 1947, § 9-619.

22-4-310. Parks system revenues kept separate — Use of funds.

(a) The following revenues and moneys are determined and declared to be cash funds which the State Parks, Recreation, and Travel Commission shall hold as separate funds and deposit in trust in any banks or depositories, other than the State Treasury, which the commission may select:

(1) The gross revenue derived by the commission from the properties and equipment of the state parks system;

(2) The moneys received by the commission from the sale of any wood, timber, rocks, stone, water, or other products from the state parks;

(3) The moneys received by the commission from the sale of any state park lands, facilities, and improvements;

(4) All moneys received by the commission as proceeds of insurance policies on any of the properties and equipment of the state parks system; and

(5) All moneys received for state parks purposes from federal means, grants, contributions, gratuities, or reimbursements or from contributions, grants, or gratuities donated by private persons, corporations, or organizations which are subject to restrictions imposed by the respective federal agencies, private persons, corporations, or organizations furnishing these moneys.

(b) All such revenues and moneys shall be subject to payment out of the funds for state parks purposes, including the payment of the principal and interest on revenue bonds issued by the Arkansas Development Finance Authority in the manner and at such times as the commission may direct.

History. Acts 1953, No. 399, § 10; 1957, No. 279, § 4; A.S.A. 1947, § 9-621; Acts 2001, No. 1390, § 10.

Amendments. The 2001 amendment

substituted “revenue bonds issued by the Arkansas Development Finance Authority” for “bonds” in (b) and made minor stylistic changes.

CASE NOTES**ANALYSIS**

Constitutionality.
Deposit of pledged revenue.

Constitutionality.

Provision that revenue securing bonds shall be deposited in banks instead of being covered into State Treasury is not forbidden by Constitution. *Fairbanks v. Sheffield*, 226 Ark. 703, 292 S.W.2d 82 (1956).

Deposit of Pledged Revenue.

Provisions of this section requiring the placing of the pledged revenue in banks were not superseded by later provision requiring the deposit of park funds in the State Treasury. *Fairbanks v. Sheffield*, 226 Ark. 703, 292 S.W.2d 82 (1956).

22-4-311. [Repealed.]

Publisher's Notes. This section, concerning the use of appropriated funds, was repealed by Acts 2001, No. 1390,

§ 11. The section was derived from Acts 1957, No. 279, § 5; A.S.A. 1947, § 9-622.

22-4-312. Bonds for construction of Arkansas Museum of Natural Resources.

(a) The State Parks, Recreation, and Travel Commission may, in accordance with the provisions of this subchapter, issue bonds in an amount not to exceed two million dollars (\$2,000,000) for the purpose of providing funds for the construction of the Arkansas Museum of Natural Resources as provided for in §§ 13-5-401 — 13-5-404 and 26-58-301 and, to secure the bonds, may pledge all funds derived from a fee of twenty (20) mills per barrel of oil produced in this state and a fee of ten cents (10¢) per one thousand (1,000) barrels of brine produced in this state for the purpose of bromine extraction as provided in § 26-58-303.

(b) Bonds so issued shall not constitute an indebtedness of the commission or of the State of Arkansas within the meaning of any constitutional or statutory limitation, and this shall be so stated on the face of each bond.

History. Acts 1980 (1st Ex. Sess.), No. 71, § 1; A.S.A. 1947, § 9-623.1.

Publisher's Notes. Acts 1985, No. 1062, § 24, provided, in part, that the authority of the State Parks, Recreation, and Travel Commission to issue revenue

bonds pursuant to Acts 1980 (1st Ex. Sess.), No. 71 was transferred to the Arkansas Development Finance Authority and that from May 1, 1985, the issuer of revenue bonds pursuant to Acts 1980 (1st Ex. Sess.), No. 71 means the Authority.

22-4-313. Bonds for construction of lodge and cabins.

(a) The State Parks, Recreation, and Travel Commission, in accordance with the provisions of this subchapter, may contract with the Arkansas Development Finance Authority to provide for the issuance of bonds by the authority for the purpose of providing funds for the design, construction, and equipping of a lodge and cabins and related facilities and improvements to be located in Mount Magazine State Park and to provide funds for reasonable financing costs, including costs of issuance, capitalized interest, and a debt service reserve fund.

(b) In order to secure the bonds, the commission is authorized to pledge to pay debt service on the bonds, the fees, rates, tolls, and charges for the services, facilities, and commodities rendered by the properties and equipment of the state parks system pursuant to § 22-4-305.

History. Acts 2001, No. 1390, § 12.

Publisher's Notes. Former §§ 22-4-313 and 22-4-314, concerning fee reductions for "Golden Age Passport" holders and for elderly persons and totally dis-

abled veterans, were repealed by Acts 1993, No. 278, § 1. The sections were derived from the following sources:

22-4-313. Acts 1977, No. 335, § 1; 1979, No. 204, § 1; A.S.A. 1947, § 9-614.1.

22-4-314. Acts 1977, No. 385, § 1; 1979, No. 321, § 1; 1985, No. 155, § 1; A.S.A. 1947, §§ 9-614.2, 9-614.3.

SUBCHAPTER 4 — ARKANSAS TRAILS SYSTEM

SECTION.	SECTION.
22-4-401. Title.	22-4-405. Criteria for acceptance into the Arkansas Trails System.
22-4-402. Definitions.	22-4-406. Classifications of trails.
22-4-403. Administration.	22-4-407. Public access to private lands.
22-4-404. Arkansas Trails Council — Creation — Powers and duties.	22-4-408. Legislative intent and purpose.

A.C.R.C. Notes. References to “this subchapter” in §§ 22-4-401 — 22-4-407 may not apply to § 22-4-408 which was enacted subsequently.

22-4-401. Title.

This subchapter may be cited as the “Arkansas Trails System Act”.

History. Acts 1979, No. 132, § 1; A.S.A. 1947, § 9-603.1.

22-4-402. Definitions.

As used in this subchapter:

- (1) “Right-of-way” means the strip of land over which a trail is constructed whether acquired by easement or fee simple title; and
- (2) “Trail” means any road, pathway, route, or other identifiable linear facility designated, constructed, and maintained to provide specific recreational experiences to the public. Trails may be established for hiking, biking, boating, canoeing, motorcycling, horse riding, use by individuals with disabilities, and other trail-oriented uses.

History. Acts 1979, No. 132, § 2; A.S.A. 1947, § 9-603.2; Acts 1997, No. 208, § 24.

A.C.R.C. Notes. Acts 1997, No. 208, § 1, codified as § 22-4-408, provided: “Legislative intent and purpose. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, function-

ally outmoded, derogatory, ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this Act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987.”

22-4-403. Administration.

A statewide trails system to be called the “Arkansas Trails System” is authorized to be administered by the State Parks Division of the Department of Parks and Tourism. The administration shall include:

- (1) Coordination of trail development between state, federal, county, municipal, and private entities;

- (2) Development of a wide variety of types of trails to provide maximum trail opportunities for the citizens of Arkansas;
- (3) Establishment of an interconnected trails system by developing new trails or by connecting existing trails or recreation areas;
- (4) Encouraging the development of trails in or near population centers;
- (5) Providing technical assistance for trail development and maintenance; and
- (6) Providing information about Arkansas trails.

History. Acts 1979, No. 132, § 3;
A.S.A. 1947, § 9-603.3.

22-4-404. Arkansas Trails Council — Creation — Powers and duties.

(a) An advisory body to the State Parks Division of the Department of Parks and Tourism, to be known as the "Arkansas Trails Council", is created for the purpose of informing the division, other trail-providing agencies, and the public at large of public need, use, and ongoing and planned trail development and to provide a public forum for discussion of trail-related issues.

(b) The council is a voluntary organization open to representatives of all state and federal agencies with an interest in or potential for trail development, to all local governments with interests in trails, to public or to private utility companies the rights-of-way of which hold trail potential, to private landowners, and to trail users.

(c) The Department of Parks and Tourism's representative on the council shall serve as the council's executive secretary.

(d) The council may make suggestions to the division concerning methods to meet trail needs within the state and shall assist the division in coordinating trail development within the state.

(e)(1) The council shall review nominations to the Arkansas Trail System and make recommendations to the division regarding the acceptance or rejection of each application based on criteria outlined in § 22-4-405.

(2) The Director of the State Parks Division may add a qualifying trail to the system after a review of recommendations made by the council.

(f) The council shall periodically review the components of the system and submit information concerning those trails of superior quality to the Heritage Conservation and Recreation Service of the United States Department of the Interior for consideration as components in the National Trails System.

(g) The council shall assist in updating the Arkansas Trails Plan, a part of the Statewide Comprehensive Outdoor Recreation Plan.

(h) The council shall periodically review member trails of the system for compliance with § 22-4-405 and shall report its findings to the division in order to maintain high quality within the system.

(i) Trails accepted into the system which do not fulfill the requirements established in this subchapter or prescribed by the division and the council may be removed from the system by the division after consultation with the council and after appropriate opportunity has been given for correction of the inadequacies.

(j) The council shall not have the power of eminent domain.

History. Acts 1979, No. 132, §§ 4, 7;
A.S.A. 1947, §§ 9-603.4, 9-603.7.

22-4-405. Criteria for acceptance into the Arkansas Trails System.

Trails accepted into the Arkansas Trails System shall meet criteria as established by the Arkansas Trails Council and the State Parks Division of the Department of Parks and Tourism, which shall include:

(1) A guaranteed right-of-way for public use for a minimum period of five (5) years;

(2) Trail operation and maintenance for a minimum period of five (5) years by an acceptable responsible organization;

(3) Adherence to state trails standards and guidelines for the trail type designated;

(4) Readiness of the trail for public use;

(5) Proper marking and signing; and

(6) Conformity of the trail with goals established in the Statewide Comprehensive Outdoor Recreation Plan or the Arkansas Trails Plan.

History. Acts 1979, No. 132, § 6;
A.S.A. 1947, § 9-603.6.

22-4-406. Classifications of trails.

Trails in the Arkansas Trails System shall be classified according to their designated use and shall include, but not be limited to, the following classifications:

(1) Interpretive trail — a route having natural, cultural, or historical points of interest identified to the public through the use of markers, plaques, brochures, or other readily recognizable means;

(2) Hiking trail — a route designated, designed, and maintained for foot travel;

(3) Bicycle trail — a route designated, designed, and maintained primarily for bicycle travel;

(4) Motorcycle trail — a route designated, designed, and maintained primarily for trail activity by motorcycle;

(5) Boat trail — a separate route or lane designated and maintained for trail activity by boat;

(6) Canoe trail — a route designated and maintained for canoeing experiences;

(7) Automobile trail — a properly marked roadway designated and maintained for recreational automobile travel;

(8) Equestrian trail — a route designated, designed, and maintained for trail activity for horse riding;

(9) Handicap trail — a route designated for trail activity by special groups as well as the general public; and

(10) Recreational trail — a route designed to meet specific recreational and physical fitness needs.

History. Acts 1979, No. 132, § 5;
A.S.A. 1947, § 9-603.5.

22-4-407. Public access to private lands.

Nothing in this subchapter shall be construed to give the public any greater right or privilege of access to private lands than that permitted by easement granted by the landowner.

History. Acts 1979, No. 132, § 8;
A.S.A. 1947, § 9-603.8.

22-4-408. Legislative intent and purpose.

The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, functionally outmoded, derogatory, and ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987.

History. Acts 1997, No. 208, § 1.

A.C.R.C. Notes. References to "this subchapter" in §§ 22-4-401 — 22-4-407

may not apply to this section which was enacted subsequently.

SUBCHAPTER 5 — PROPERTY DEDICATED FOR PUBLIC PARKS

SECTION.

22-4-501. Disposition of property authorized.

22-4-502. Officers authorized to execute disposition.

22-4-503. Procedure for advertising disposition — Bids.

SECTION.

22-4-504. Obligation of contract provision or indebtedness not impaired.

Effective Dates. Acts 1959, No. 224, § 6: Mar. 25, 1959. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that there is a dire need for providing a method of disposing of or leasing certain publicly owned recreational facilities in the state, and the enactment of this bill will provide such method. Therefore, an emergency is

declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1961, No. 25, § 2: Feb. 2, 1961. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that there is a dire

need for providing a method of disposing of or leasing certain publicly owned recreational facilities in the state, and the enactment of this bill will provide such method. Therefore, an emergency is de-

clared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

CASE NOTES

Exchange of Property.

Where city exchanged a portion of a playground for another tract, this sub-

chapter was applicable. *James Co. v. Sheppard*, 249 Ark. 81, 458 S.W.2d 752 (1970).

22-4-501. Disposition of property authorized.

(a)(1) The state or any municipal corporation, county, or other political subdivision thereof shall have the authority to sell, lease, grant, exchange, or otherwise dispose of any property, or interest therein, comprising parks, playgrounds, golf courses, swimming pools, or other property which has been dedicated to a public use for recreational or park purposes by a private citizen, corporation, or association. The property, or interest therein, may have been thereafter acquired by the state, county, city, or other political subdivision thereof without regard to whether the public use has been previously abandoned or whether the property has become unsuitable or inadequate for the purpose for which originally dedicated.

(2) Any disposition shall be on such terms and conditions as may be deemed desirable or necessary.

(b)(1) Any municipality in this state shall have the authority to lease to any individual, firm, or corporation municipal property comprising parks, playgrounds, golf courses, swimming pools, or other property which have been dedicated to a public use for recreational or park purposes on such terms and conditions as may be desirable or necessary.

(2) Any municipality is also authorized to lease municipally owned lands and facilities to a community college board to be used for educational purposes.

(3) Any lease under this subsection shall be for a period not to exceed ninety-nine (99) years.

(4) Those persons or entities holding leases on municipal park and recreational facilities on July 5, 1977, shall have the first option to renew their leases.

(c) Except as provided in subsection (b) of this section, any lease under this subchapter shall be for a period not to exceed twenty (20) years.

History. Acts 1959, No. 224, § 1; 1961, No. 25, § 1; 1965, No. 102, § 1; 1977, No. 795, § 1; A.S.A. 1947, §§ 14-701, 19-3646.

Publisher's Notes. Acts 1977, No. 795, § 1, is also codified as § 14-269-103(b).

CASE NOTES

ANALYSIS

Authority to lease.
Permit to erect benches.

Authority to Lease.

This section and § 14-269-103 grant a municipality the authority to lease property it obtained through eminent domain proceedings to use as a park to any individual, firm, or corporation, even though a lessee might place a presidential library,

park, or complex on that property. *Pfeifer v. City of Little Rock*, 346 Ark. 449, 57 S.W.3d 714 (2001).

Permit to Erect Benches.

Granting a permit to erect benches with advertising material on them is not a sale or other disposition of a park or recreational facility under this section. *Hood v. Pine Bluff*, 238 Ark. 826, 385 S.W.2d 1 (1964).

22-4-502. Officers authorized to execute disposition.

Any sale, lease, grant, or other disposition authorized by § 22-4-501 shall be in the discretion of, and executed by:

- (1) The Governor, as to state property;
- (2) The county judge, as to county property;
- (3) The mayor and council, city commissioners, or other governing authority, as to property of a municipal corporation.

History. Acts 1959, No. 224, § 2;
A.S.A. 1947, § 14-702.

CASE NOTES

Cited: *James Co. v. Sheppard*, 249 Ark. 81, 458 S.W.2d 752 (1970).

22-4-503. Procedure for advertising disposition — Bids.

(a) Any sale, lease, grant, exchange, or other disposition of any property under the provisions of this subchapter shall be made only after advertising the disposition in a newspaper in which legal advertisements are published for the county in which the land or other facilities to be disposed of lie, one (1) time a week for four (4) weeks.

(b) In the event the property to be sold lies in more than one (1) county, the advertisement shall be run one (1) time a week for four (4) weeks in the newspaper in which legal advertisements are published for each county.

(c) All state property required to be advertised under this subchapter shall also be advertised in two (2) additional newspapers of general circulation in this state.

(d) The advertisements shall describe the property, state the manner of disposition to be made, specify the time and place of the disposition, and state any other requirements stipulated by the disposing instrumentality of government, including an award to the highest responsible bidder, subject to the provisions of subsection (f) of this section.

(e) All sales and other dispositions under the provisions of this subchapter shall be made under the terms of the advertisement for cash sale, rental, or lease consideration.

(f) The selling or disposing authority shall have the right to reject all bids in the event the high bid shall prove unsatisfactory for any reason. The property shall then be readvertised and disposed of pursuant to this section.

History. Acts 1959, No. 224, § 3;
A.S.A. 1947, § 14-703.

CASE NOTES

ANALYSIS

Exchange of property.
Tract.

Exchange of Property.

Where city exchanged a portion of a playground for another tract, this section required advertising of the transaction. *James Co. v. Sheppard*, 249 Ark. 81, 458 S.W.2d 752 (1970).

Tract.

Term "tract" as used in Acts 1935, No. 170, § 9, relating to advertising rates, meant a tract as limited by § 2 of that act, providing for contiguous lots to be entered as one tract. *Moses v. Gingles*, 208 Ark. 788, 187 S.W.2d 892 (1945).

22-4-504. Obligation of contract provision or indebtedness not impaired.

Nothing in this subchapter shall be construed as impairing the obligation of any contract provision, bond issue, or other indebtedness thereon, whether by way of reversionary clause or otherwise.

History. Acts 1959, No. 224, § 4;
A.S.A. 1947, § 14-704.

CASE NOTES

Cited: *James Co. v. Sheppard*, 249 Ark. 81, 458 S.W.2d 752 (1970).

SUBCHAPTER 6 — CROWLEY'S RIDGE TRAIL COMMISSION

SECTION.

22-4-601, 22-4-602. [Repealed.]

22-4-601, 22-4-602. [Repealed.]

A.C.R.C. Notes. Acts 2001, No. 783, § 1, provided: "The following are hereby abolished: (1) The Advisory Committee on Accountability; (2) The Crowley's Ridge Trail Commission; (3) The advisory council to the Arkansas Natural Heritage Commission of the Department of Arkansas Heritage; (4) The Advisory Board for Di-

rector of the Arkansas High Technology Training Center; (5) The Low-Level Radioactive Waste Advisory Group; (6) The Arkansas Medal of Honor Commission; (7) The Quality Management Board; and (8) The Arkansas Task Force on Timber Land Assessment;".

Publisher's Notes. This subchapter,

concerning Crowley's Ridge Trail Commission, was repealed by Acts 2001, No. 783, § 2. The section was derived from the following sources:

22-4-601. Acts 1997, No. 564, § 1.
22-4-602. Acts 1997, No. 564, § 2.

CHAPTER 5

STATE LANDS GENERALLY

SUBCHAPTER

1. GENERAL PROVISIONS.
2. COMMISSIONER OF STATE LANDS.
3. ADMINISTRATION.
4. TITLE TO LANDS.
5. ACQUISITION OF FORESTLAND.
6. TRESPASS.
7. FIELD NOTES AND RECORDS.
8. MINERAL, TIMBER, AND OTHER RESOURCES.

RESEARCH REFERENCES

Am. Jur. 72 Am. Jur. 2d, States, § 64 et seq. 81A C.J.S., States, § 145 et seq.
C.J.S. 73A C.J.S., Pub. Lands, § 178 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

22-5-101. Program for growing pine on highway rights-of-way — Responsibilities of Arkan-

sas Forestry Commission
— Thinning practices —
Disposition of proceeds.

Preambles. Acts 1983, No. 696, contained a preamble which read: "Whereas, in some areas of the state the rights-of-way of state highways are wider than necessary and mowing and other maintenance of such excess area is not economically practical; and

"Whereas, if the entire area of such rights-of-way is not properly managed it becomes unattractive and may become a fire and smoke hazard; and

"Whereas, a substantial part of the excess rights-of-way along state highways is suitable for growing pine; and

"Whereas, it would appear that planting of pine in those portions of state high-

ways that are not needed for roadways, shoulders and other highway related uses, and on other lands owned by the state or the Highway and Transportation Department, such as barrow pits and dirt pits would not only beautify such areas but if properly managed and sold could be a source of revenues to the state; and

"Whereas, since the State Highway and Transportation Department and the State Forestry Commission are the two agencies that would be directly involved in any such program, those agencies should investigate the feasibility of initiating such program;

"Now, therefore..."

22-5-101. Program for growing pine on highway rights-of-way — Responsibilities of Arkansas Forestry Commission — Thinning practices — Disposition of proceeds.

(a) The State Highway and Transportation Department shall determine those state highway rights-of-way that are wider than necessary for highway purposes and those borrow pits, dirt pits, and other highway-related lands owned by the state or the department that could be used to produce pine timber for pulpwood or other uses and shall submit a listing of these areas to the Arkansas Forestry Commission which shall inspect the areas to determine if they are suitable for planting and growing pine.

(b) If the department and the Arkansas Forestry Commission determine that there are enough such areas to make it feasible to initiate a program for planting and producing pine thereon, the two (2) agencies shall cooperatively initiate and maintain such program as soon as practicable.

(c) When a program authorized by this section is initiated, the Arkansas Forestry Commission shall have the responsibility for all planting and management under the program and for applying appropriate silvicultural practices thereto, including the harvesting and marketing of wood products so produced.

(d) If the department determines that traffic safety demands that different thinning practices than those normally applied in the management of such timber are required to accommodate highway safety, the Arkansas Forestry Commission shall make arrangements for thinning of the timber growth along the rights-of-way in the manner and to the extent directed by the State Highway Commission.

(e) When a program authorized by this section is initiated, the net proceeds derived from the sale of pine grown on the state highway rights-of-way or other highway-related areas owned by the state or the department shall be deposited in the State Treasury as special revenues. Fifty percent (50%) thereof shall be credited to the State Highway and Transportation Department Fund, and fifty percent (50%) thereof shall be credited to the State Forestry Fund.

History. Acts 1983, No. 696, §§ 1-3; to be used for road maintenance, § 27-67-A.S.A. 1947, §§ 9-740 — 9-742. 209.

Cross References. Natural resources

SUBCHAPTER 2 — COMMISSIONER OF STATE LANDS

SECTION.

- 22-5-201. Oath.
- 22-5-202. Bond.
- 22-5-203. Seal.
- 22-5-204, 22-5-205. [Repealed.]
- 22-5-206. Control over state's lands.
- 22-5-207. Lands forfeited to state for taxes.

SECTION.

- 22-5-208. Books, plats, and maps.
- 22-5-209. Deeds, abstracts, and contracts affecting state lands filed in office of Commissioner of State Lands — Failure to comply.

Cross References. Fees, § 21-6-203.

Preambles. The Joint Resolution of 1869, No. 16, contained a preamble which read: "Whereas, by the act providing for the appointment of a Commissioner of Immigration and State Lands, approved July 15, 1868, it was omitted to require a bond of the person holding said office;

"Therefore..."

Effective Dates. Acts 1857, p. 94, § 22: effective on passage.

Acts 1868, No. 20, § 20: effective on passage.

22-5-201. Oath.

The Commissioner of State Lands shall take an oath that he or she will not, directly or indirectly, be engaged in the purchase of lands belonging to the state, to be sold by him or her during his or her continuance in office, and that he or she will not, directly or indirectly, engage in any speculation in swamp and overflowed lands or give information to any agent, friend, or secret or other partner, so as to secure the advantages of such information to himself or herself to any person, association, or company, to the prejudice or exclusion of other persons.

History. Acts 1853, § 5, p. 161; 1857, § 21, p. 94; C. & M. Dig., § 6572; Pope's Dig., § 8603; A.S.A. 1947, § 10-102.

22-5-202. Bond.

(a) It shall be the duty of the Commissioner of State Lands to give bond, with good and sufficient security to be approved by the Governor, in the sum of twenty thousand dollars (\$20,000), for any moneys and other property belonging to the state which may be in or may come into his or her possession and for the faithful performance of his or her official duties.

(b) The bond shall be given to the State of Arkansas and shall be filed in the office of the Secretary of State.

History. Joint Res. 1869, No. 16, p. 212; C. & M. Dig., § 6573; Pope's Dig., § 8604; A.S.A. 1947, § 10-103.

A.C.R.C. Notes. The operation of this section was suspended by adoption of a self-insured fidelity bond program for pub-

lic officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The subsection may again become effective upon cessation of coverage under that program. See § 21-2-703.

22-5-203. Seal.

The Commissioner of State Lands shall be provided with an official seal for the use of his or her office, and every official paper or document issued by the Commissioner of State Lands shall have the seal of his or her office thereupon, or thereto attached. The seal shall authenticate every official paper issued by him or her.

History. Acts 1868, No. 20, § 18, p. 61; C. & M. Dig., § 6574; Pope's Dig., § 8605; A.S.A. 1947, § 10-104.

CASE NOTES

Evidence of Title.

A deed of the Commissioner of State Lands conveying lands forfeited for taxes, authenticated by his official seal, is prima

facie evidence of title, although it has not been recorded. *Thornton v. Smith*, 88 Ark. 543, 115 S.W. 677 (1909).

22-5-204, 22-5-205. [Repealed.]

Publisher's Notes. These sections, concerning commissioner's salary and deputy commissioners, were repealed by Acts 1995, No. 1296, § 80. The sections were derived from the following sources:

22-5-204. Acts 1913, No. 302, § 4; C. & M. Dig., § 8676; Pope's Dig., § 11414;

Ark. Const. Amend. 56, § 2; A.S.A. 1947, § 10-105.

22-5-205. Acts 1871, No. 32, § 3, p. 98; C. & M. Dig., § 6576; Pope's Dig., § 8607; Acts 1943, No. 200, § 1; A.S.A. 1947, § 10-106.

22-5-206. Control over state's lands.

The landed interests of this state shall be controlled by the Commissioner of State Lands, and he or she shall dispose of them as provided by law.

History. Acts 1939, No. 331, § 14; A.S.A. 1947, § 10-107.

22-5-207. Lands forfeited to state for taxes.

(a) The Commissioner of State Lands shall have charge and control of the disposition of all lands that have been forfeited to the state for nonpayment of taxes legally assessed thereon, and he or she shall dispose of the forfeited lands as provided by law.

(b) The Auditor of State is directed to furnish to the Commissioner of State Lands a complete list of all lands so forfeited to the state each year, within thirty (30) days after the time fixed by law, for settlement by collectors of revenue. This list shall show all the lands in this state forfeited to the state for nonpayment of taxes thereon in the year for which the titles are made.

History. Acts 1868, No. 20, § 9, p. 61; C. & M. Dig., § 6579; Pope's Dig., § 8610; A.S.A. 1947, § 10-111.

Publisher's Notes. This section may be affected by title 26, chapter 37.

Cross References. Furnishing list of tax-forfeited lands to assessor, § 26-28-107.

CASE NOTES

Evidence of Title.

A tax deed executed by the Commissioner of State Lands which names the

purchaser, describes the property sold, states the consideration, and contains apt words conveying all the right, title, and

interest of the state is prima facie evidence of title in the purchaser, although it does not contain recitals showing that the requisite steps have been taken to give the

state title. *Cracraft v. Meyer*, 76 Ark. 450, 88 S.W. 1027 (1905).

Cited: *Helena v. Hornor*, 58 Ark. 151, 23 S.W. 966 (1893).

22-5-208. Books, plats, and maps.

(a) The Commissioner of State Lands shall take possession and have charge of all the books, papers, evidences of title, plats, and maps of all internal improvement, seminary, saline, and swamp and overflowed lands.

(b) The Commissioner of State Lands shall proceed to complete all the books, papers, plats, and maps that may be delivered to him or her by the Auditor of State if any are incomplete.

(c) The Commissioner of State Lands shall make out for each township in this state, in which there are any of the lands described in subsection (a) of this section, township maps in which he or she shall carefully classify the internal improvement lands, seminary lands, saline lands, and swamp and overflowed lands, each description making a classification unto itself and to be discriminated one from the other in such maps or plats.

(d) The maps or plats shall be kept in the office of the Commissioner of State Lands and, at all times during ordinary business hours, shall be open to the examination of any person interested in state lands or desiring to purchase any state lands.

History. Acts 1868, No. 20, §§ 6, 7, p. 61; C. & M. Dig., §§ 6578, 6580, 6581; Pope's Dig., §§ 8609, 8611, 8612; A.S.A. 1947, §§ 10-108, 10-109.

Cross References. Correction of descriptions in office of Commissioner of State Lands, § 26-26-720.

22-5-209. Deeds, abstracts, and contracts affecting state lands filed in office of Commissioner of State Lands — Failure to comply.

(a) All deeds, abstracts, contracts, and other evidences of title to realty belonging to the State of Arkansas shall be filed in the office of the Commissioner of State Lands to be preserved by the Commissioner of State Lands as the other public records and files of his or her office.

(b) In the event any state office, department, agency, or institution fails or refuses to comply with the provisions of subsection (a) of this section, the Commissioner of State Lands shall report the failure or refusal to comply to the Governor, who shall notify the administrative officer of the office, department, agency, or institution to immediately report to him or her the reasons for his or her failure or refusal to comply.

(c) Willful failure or refusal to comply with this section by any officer shall constitute nonfeasance in office.

History. Acts 1947, No. 172, §§ 1, 5; A.S.A. 1947, §§ 10-112, 10-113.

Publisher's Notes. Acts 1883, No. 13, § 1, provided that all original certificates

for the purchase of lands filed by the Auditor of State in the office of the Treasurer of State, as well as all other evidences of title to state lands in the custody of the Treasurer of State, would be filed in

the office of the Commissioner of State Lands, to be preserved by the Commissioner of State Lands as the other public records and files of his or her office.

SUBCHAPTER 3 — ADMINISTRATION

SECTION.

22-5-301. Policy.

22-5-302. Subchapter controlling.

22-5-303. Additional duties of Commissioner of State Lands.

22-5-304. Survey in case of doubtful location of state lands — Actions to quiet title.

22-5-305. State Land Use Committee — Commissioner of State Lands as secretary — Employment of person with technical training — Assignment of employees — Supervision.

SECTION.

22-5-306. Appraisers — Qualifications, oath, and bond.

22-5-307. Classification and disposition of state lands generally.

22-5-308. Agricultural lands — Disposition in manner prescribed by federal government.

22-5-309. Agricultural lands — Donation.

22-5-310. Agricultural lands — Sale to adjoining landowners.

22-5-311. Agricultural lands — Development.

Effective Dates. Acts 1945, No. 49, § 7: Feb. 14, 1945. Emergency clause provided: "Due to the fact that hundreds of thousands of acres of state-owned, tax-forfeited lands are now on the books of the Commissioner of State Lands and open for sale, donation or transfer by the said Commissioner, and applications to pur-

chase or donate most of said lands from the said Commissioner of State Lands are being received daily, an emergency is hereby declared to exist and it being necessary for the preservation of the public peace, health, safety and welfare, this act shall take effect and be in force from and after its passage and approval."

22-5-301. Policy.

It is declared to be the policy of the State of Arkansas:

(1) To provide for the development and conservation of the human and soil resources of the state;

(2) To protect the lands owned by the state and to provide for their classification and best use in the interests of the future general welfare and agricultural well-being of the state;

(3) To encourage the settlement of the farm families of the state upon family-sized tracts under conditions conducive to successful farming;

(4) To preserve land in public ownership suited for public use as forests, parks, or other purposes;

(5) To cooperate with federal agencies having similar and allied objectives; and

(6) To protect and promote the health, safety, and general welfare of the people of Arkansas.

History. Acts 1939, No. 331, § 1;
A.S.A. 1947, § 10-401.

22-5-302. Subchapter controlling.

Insofar as any provision of this subchapter is inconsistent with the provisions of any other law, the provisions of this subchapter shall be controlling.

History. Acts 1939, No. 331, § 16;
A.S.A. 1947, § 10-417.

22-5-303. Additional duties of Commissioner of State Lands.

In addition to other duties and powers conferred by law upon the Commissioner of State Lands, he or she shall have the following duties and powers:

(1) To effectuate the policies declared in § 22-5-301, to carry out its purposes by securing the cooperation and assistance of the United States and any of its agencies, and to enter into contracts, agreements, and conveyances necessary to secure such federal assistance;

(2) To conduct investigations, independently or jointly with other state and federal agencies, relating to conditions and factors affecting, and methods of accomplishing more effectively, the purposes of this subchapter;

(3) To assign lands to the several state agencies for administration, subject to their agreement and acceptance.

History. Acts 1939, No. 331, § 2;
A.S.A. 1947, § 10-402.

22-5-304. Survey in case of doubtful location of state lands — Actions to quiet title.

(a) In cases where the location of lands claimed by the state appears to be doubtful or subject to controversy because of faulty descriptions or otherwise, the Commissioner of State Lands shall cause those lands to be surveyed in order to accurately locate the lands or shall request the assistance of other state agencies and of state and county officers and employees in ascertaining the location of the lands.

(b) The Commissioner of State Lands may request the Attorney General to bring an action to confirm or quiet title to the land in the state.

History. Acts 1939, No. 331, § 3;
A.S.A. 1947, § 10-403.

22-5-305. State Land Use Committee — Commissioner of State Lands as secretary — Employment of person with technical training — Assignment of employees — Supervision.

(a) A State Land Use Committee shall be appointed by the Commissioner of State Lands, to be composed of nine (9) members, each of whom shall be a qualified elector.

(b) The Commissioner of State Lands shall appoint one (1) member from each of the seven (7) congressional districts and two (2) members at large for a term of two (2) years.

(c) The appointments shall be made with the advice and consent of the Senate.

(d) The Commissioner of State Lands shall serve as Secretary to the committee and shall receive a salary of two thousand dollars (\$2,000) per year for his or her services.

(e) The Commissioner of State Lands may employ one (1) person who has had technical training in problems relating to land use and who shall assist in the performance of any duties that may be required by the committee. The Commissioner of State Lands shall determine the salary of this employee.

(f) The supervising officer of any state agency or institution of learning may detail or assign to the committee members of the staff of the agency or institution and may make such special reports, investigations, or studies as the committee may request.

(g) The Commissioner of State Lands may request the committee and other state or federal agencies whose regular functions require an understanding of land qualities and land classification for particular uses to supervise the inspection, classification, and appraisal of state-owned land according to its most appropriate use, having regard to the present and future welfare of the state.

History. Acts 1939, No. 331, §§ 4, 10; 1945, No. 49, § 6; A.S.A. 1947, §§ 10-404 — 10-406.

Publisher's Notes. Regarding the reference in subsection (b) of this section to

seven congressional districts, there are now four congressional districts established by court order. See notes to title 7, chapter 2.

22-5-306. Appraisers — Qualifications, oath, and bond.

(a) The Commissioner of State Lands shall appoint such appraisers as are provided for by any appropriation to inspect and appraise state-owned lands for sale, transfer, or donation.

(b) It shall be unlawful for the Commissioner of State Lands to dispose of state-owned lands without an appraisal made by appraisers appointed by the Commissioner of State Lands, except that he or she may sell or dispose of town lots and acreage descriptions of ten (10) acres or less without an appraisal.

(c) Each appraiser selected shall, by education or experience, be familiar with and know how to arrive at the value of lands, water

rights, mineral rights, timber lands, rural lands, agricultural lands, and noncultivable lands; shall understand legal descriptions of real properties; shall have a working knowledge of county and state real property records; and shall be capable of passing dependable judgments upon the values of rural properties.

(d) Upon entering the duties of his or her office, each appraiser shall take an oath of office as prescribed in the Arkansas Constitution, Article 19, § 20. This oath shall state that he or she will not, directly or indirectly, be engaged in the purchase of state-owned lands during his or her continuance in office and that he or she will not engage in any speculation of state-owned lands or give information to any agent, friend, or secret or other partner so as to secure the advantages of that information to himself or herself or to any person, association, or company to the prejudice or exclusion of other persons.

(e) Each appraiser shall enter into bond to the state in the sum of one thousand dollars (\$1,000), to be furnished by a surety company authorized to do business in the State of Arkansas, conditioned that he or she will faithfully discharge all of his or her duties according to law and the rules and regulations of the State Land Use Committee.

(f) After qualifying as provided in this section, each appraiser shall perform his or her duties in the manner prescribed by the Commissioner of State Lands.

History. Acts 1945, No. 49, §§ 1-5;
A.S.A. 1947, §§ 10-407 — 10-411.

22-5-307. Classification and disposition of state lands generally.

(a) State lands shall be classified as to whether they should be retained in public ownership, allocated for agricultural settlement, as provided in § 22-5-308, or returned to private ownership through sale or donation, and the classification may be changed.

(b) The Commissioner of State Lands shall dispose of the lands and make deeds to the lands in accordance with this classification. Only lands classified as suitable for return to private ownership shall be subject to sale to private individuals by the Commissioner of State Lands.

(c) The Commissioner of State Lands may direct that land shall be retained and administered by certain appropriate state or local agencies or shall be disposed of and deeded in such manner that the state shall be eligible for any benefits under any act of Congress.

(d) Where lands are disposed of by return to private ownership, the deeds shall contain such restrictive covenants or restraints on alienation as the State Land Use Committee may deem necessary to ensure the protection and use of the land in a manner beneficial to the public; all coal, oil, gas, and mineral rights shall be reserved to the state except in the case of tax-forfeited lands. However, the original owner or his or her heirs shall be allowed to redeem or acquire these lands in accor-

dance with the provisions of this subchapter without the oil, gas, and mineral rights being restricted or reserved.

(e)(1) Where land is classified as land which should be returned to private ownership by sale, the Commissioner of State Lands shall offer the land for sale to the highest bidder, but only if his or her bid is at least equal to the appraised value.

(2) No land shall be sold for less than its appraised value, except that, pending appraisal by the committee, the Commissioner of State Lands is authorized to continue sales of state lands as provided for in §§ 26-37-101 — 26-37-105, 26-37-201 — 26-37-205, and 26-37-301 — 26-37-303.

(f) No lands shall be donated by the Commissioner of State Lands until they have been classified as appropriate for donation by the committee.

(g) If, at the end of three (3) years after appraisal by the committee, lands classified as land which should be returned to private ownership by sale shall remain unsold on the books of the Commissioner of State Lands, the unsold lands shall be reappraised by the committee.

History. Acts 1939, No. 331, § 5; **Cross** **References.** Tax-forfeited A.S.A. 1947, § 10-412. lands, § 22-6-501 et seq.

CASE NOTES

Method of Sale.

The method of sale is not designated, other than that appraised lands shall go to the highest bidder, and the court cannot

supply what may appear to be deficiencies of detail. *Kitchens v. Machen*, 210 Ark. 1046, 198 S.W.2d 833 (1947).

22-5-308. Agricultural lands — Disposition in manner prescribed by federal government.

(a) The Commissioner of State Lands may allocate lands suitable for agricultural settlement, or for uses in connection with agricultural settlement, to the United States or agencies of the United States, or to individuals, organizations, and associations approved by the United States or agencies of the United States and cooperating in federal programs, under such conditions as may be agreed upon by the Commissioner of State Lands and the United States or any agency of the United States.

(b) In pursuance of such allocation, the Commissioner of State Lands may enter into sale contracts, sell, deed, purchase, exchange, lease, or dispose of lands with or without consideration, or waive rights and priorities, in such manner and under such conditions as may be required by the United States or agencies of the United States, and agreed upon by the Commissioner of State Lands, in order to effect the policies declared in § 22-5-301.

History. Acts 1939, No. 331, § 6; A.S.A. 1947, § 10-413.

22-5-309. Agricultural lands — Donation.

(a) The Commissioner of State Lands, with the advice of the State Land Use Committee, shall prescribe rules and regulations for the donation of lands suitable for agricultural settlement, in such manner as to safeguard the future general welfare and agricultural interests of the state, and to prevent isolated settlement, settlement on land not suited to agriculture, or settlement in areas or under conditions where it seems apparent that the donee could not farm successfully and would suffer undue hardships.

(b) The Commissioner of State Lands shall deliver a deed to the donee, containing such restrictions, covenants, and restraints on alienation as the committee shall determine are necessary to safeguard the future general welfare and agricultural interests of the state.

(c) The Commissioner of State Lands, with the advice of the committee, shall determine the size of tracts which may be donated and shall not permit the donation of an area larger than can be worked by a farm family nor an area smaller than will produce an adequate living for a farm family, considering its location, fertility, and the type of farming which may appropriately be conducted upon it.

(d) The Commissioner of State Lands may arrange with the United States and the agencies of the United States for assistance to and supervision of donees and prospective donees upon such terms as may be agreed upon by the Commissioner of State Lands and the United States or agencies of the United States. The Commissioner of State Lands may execute such conveyances, waivers, subordination agreements, or other instruments as may be required to enable donees and prospective donees to participate in and benefit from federal programs.

History. Acts 1939, No. 331, § 7;
A.S.A. 1947, § 10-414.

CASE NOTES**Cancellation of Donation.**

In suit to cancel donation certificate and deed, evidence sustained finding that land was not subject to donation because it was

under cultivation within five years prior thereto. *York v. Chappell*, 198 Ark. 45, 127 S.W.2d 266 (1939) (decision under prior law).

22-5-310. Agricultural lands — Sale to adjoining landowners.

(a) The Commissioner of State Lands may sell, at their appraised value, tracts of land suitable for agriculture to adjoining landowners who desire the land to add to their farms.

(b) No sales shall be authorized where the resulting farm would contain an area greater than a family-sized farm, considering the location of the tract and the types of farming appropriate to the area.

(c) Deeds for land so sold shall be made in the same manner as deeds provided for in § 22-5-307.

History. Acts 1939, No. 331, § 8;
A.S.A. 1947, § 10-415.

22-5-311. Agricultural lands — Development.

(a) Where lands have been classified as lands which could be made suitable for agriculture through further development, the Commissioner of State Lands shall investigate and recommend possible methods of financing the cost of the development and may request the aid of other state, local, and federal agencies in the investigations.

(b) If the investigation reveals that the area is suitable for agricultural development and that the cost of proper development will be reasonable, the Commissioner of State Lands may make applications to the United States and to agencies of the United States for assistance in the development projects, may make contracts with or conveyances to the agencies or to associations, organizations, or individuals cooperating with or approved by the agencies, and may make or arrange for the making of such contributions to the cost of the improvements as may be required by the cooperating federal agency.

(c) The contribution of the Commissioner of State Lands shall be limited to such amounts as shall be necessary to facilitate the initiation of settlement projects in conformity with § 22-5-301 but shall not include the financing of any development project.

History. Acts 1939, No. 331, § 9;
A.S.A. 1947, § 10-416.

SUBCHAPTER 4 — TITLE TO LANDS

SECTION.

- 22-5-401. Suits to recover state's property or quiet title.
- 22-5-402. Tax title void when in conflict with state's interest.
- 22-5-403. Title to lands formed in navigable waters.
- 22-5-404. Title to lands formed in non-navigable lakes or abandoned river channels.
- 22-5-405. Deeds to lands in lakes or rivers.

SECTION.

- 22-5-406. Limited quitclaim of streambed of Mulberry River.
- 22-5-407. Sixteenth section school lands.
- 22-5-408. State Bank lands.
- 22-5-409. Escheated corporation lands.
- 22-5-410. Overdue tax lands and internal improvement lands.
- 22-5-411. Filing of deeds to state property.

Preambles. Acts 1901, No. 127, contained a preamble which read: "Whereas, owners of land along navigable rivers often suffer by having such land washed away; and

"Whereas, under existing laws if such land reforms as an island in a navigable stream though within the original boundary of the former owner, it belongs not to him but to the state..."

Acts 1953, No. 126, contained a preamble which read: "Whereas, many cutoffs have been made in the Mississippi River, and other rivers in the State of Arkansas, both naturally and artificially for the purpose of controlling the current of the river and the bank stabilization, and many old former river beds have remained as the result of such cutoffs and have gradually built up and reached the high-water mark

as defined by the Supreme Court of Arkansas in the case of *St. Louis, Iron Mt. & S. Ry. Co. v. Ramsey*, 53 Ark. 314, 13 S.W. 931 (1890), and permanent timber vegetation has grown on all or parts of said old abandoned riverbeds; and

"Whereas, it is intended hereby to clarify the intent of Act 203 of the General Assembly approved March 8, 1945, and to eliminate any question as to the intent thereof;

"Therefore, Sections 1 and 2 of Act 203 of the 1945 General Assembly are hereby respectively amended to read as follows ..."

Acts 1981, No. 830, contained a preamble which read: "Whereas, in a recent decision, the Arkansas Supreme Court, for the first time, ruled that the Mulberry River is a navigable stream; and

"Whereas, prior to said decision, the Mulberry River had been considered non-navigable for all purposes and consequently it was assumed that the bed of the stream was owned by adjacent property owners; and

"Whereas, prior to said Supreme Court ruling and based on the assumption that the stream bed was owned by adjacent property owners, many of the adjacent property owners executed oil and gas leases on their lands, including the bed of the Mulberry River; and

"Whereas, under the ruling of the Supreme Court that the Mulberry River is navigable, the bed of the Mulberry River is owned by the State of Arkansas and the ownership thereof by the state has caused considerable confusion regarding previously executed oil and gas leases and in order to eliminate such confusion it is in the best interests of all concerned that the State of Arkansas relinquish all right, title an interest in the oil and gas and other minerals underlying the bed of the Mulberry River;

"Now therefore..."

Acts 1981, No. 872, contained a preamble which read: "Whereas, the Supreme Court of Arkansas in finding that the Mulberry River was a navigable stream did so by expanding the decision of navigability to include recreational purposes; and

"Whereas, under prior decisions the test for navigability had been commercial usage; and

"Whereas, the Arkansas Supreme Court

found the Mulberry River to be navigable based upon its new test of recreational usage; and

"Whereas, by so redefining navigability using a new definition of recreational usage affected and changed the assumption that the adjacent property owners owned to the center of the streambed which had existed since Arkansas became a state in the union;

"Now therefore..."

Effective Dates. Acts 1851, § 19, p. 108: effective on passage.

Acts 1905, No. 183, § 2: effective on passage.

Acts 1911, No. 10, § 2: declared effective on passage.

Acts 1915, No. 194, § 2: Mar. 20, 1915. Emergency declared.

Acts 1921, No. 671, § 3: March 29, 1921. Emergency declared.

Acts 1931, No. 245, § 3: March 31, 1931. Emergency declared.

Acts 1937, No. 47, § 2: Feb. 5, 1937. Emergency clause provided: "It is ascertained by the General Assembly and declared to be a fact that the title to certain real estate is defective because of errors committed by certain corporations and that by reason of said defective titles persons, in fact, holding title to said lands are unable to convey the same. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, the same shall take effect immediately upon its passage and approval."

Acts 1963, No. 525, § 2: Mar. 19, 1963. Emergency clause provided: "It is hereby found and determined by the General Assembly that there are many owners of sixteenth section school lands in this state who are unable to cure or quiet their titles to such lands due to lost deeds that were never recorded or due to the fact that such records have been destroyed by fire, and that this situation is working a hardship on the citizens of this state and should be corrected immediately. Therefore an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in force from the date of its passage and approval."

Acts 1981, No. 872, § 2: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the decision of the Arkansas

Supreme Court in holding the Mulberry River to be navigable seriously impaired the oil and gas leases, farming leases and the sale of property along the Mulberry River; that the boundary lines of property owners have been materially affected in that they now cannot be determined without additional court action; that this act is

immediately necessary to correct this situation and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

22-5-401. Suits to recover state's property or quiet title.

(a) It shall be the duty of the Attorney General, and any assistant attorney appointed by the Governor on a contingency fee not to exceed twenty-five percent (25%), to institute suit in the name of the state to recover any forgotten, lost, or other outstanding public interest or property or to quiet title to any lands, whether surveyed or unsurveyed, whether known or hereafter discovered, to which the state, either in law or equity, may have or claim title, and which for any reason may not appear on the records of the Commissioner of State Lands.

(b) It shall also be the duty of the Attorney General and any assistant attorney to investigate the records of the Commissioner of State Lands for the purpose of determining whether title has been obtained to any of the state's lands by any illegal or fraudulent methods. If it shall appear that title is held by any person, company, or corporation to any lands through or by any conveyance from the state obtained by fraudulent or false acts or means, statements, or oaths, the Attorney General and assistant attorneys shall institute suit in the proper court to cancel the conveyance and recover those lands.

(c) It shall be the duty of the Attorney General and his or her assistants to make a detailed list and description of any such lands and file the list with the Commissioner of State Lands after the lands shall have been adjudicated as the property of the state.

(d) If suit is brought to recover or quiet title in equity, an order may be obtained for the sale of the land as in the case of sales of lands upon decree in equity, and, after paying expenses, the balance of the purchase money shall be deposited in the State Treasury.

(e) This section shall not apply to persons who hold title to lands at the time of any alleged forfeiture for taxes or to their grantees, where the taxes have been continuously paid since the alleged forfeitures.

History. Acts 1915, No. 194, § 1; C. & M. Dig., §§ 4532, 9295; Pope's Dig., §§ 5589, 11981; A.S.A. 1947, § 10-201.

CASE NOTES

Unclaimed Personal Property.

This section does not authorize a suit to recover unclaimed, abandoned, or forgotten money, rents, royalties, credits, or

other property belonging to unnamed persons. *State v. Phillips Petroleum Co.*, 212 Ark. 530, 206 S.W.2d 771 (1947).

22-5-402. Tax title void when in conflict with state's interest.

No tax title shall be valid or binding against the equitable or legal interest of this state in or to any real estate whatever. However, such tax titles shall be void so far as they shall conflict with the interest of the state and shall be treated and considered as null and void in both law and equity in all courts of the state.

History. Acts 1851, § 13, p. 108; C. & M. Dig., § 6779; Pope's Dig., § 8707; A.S.A. 1947, § 10-214.

CASE NOTES**ANALYSIS**

Estoppel.

Sale of state lands.

Titles conveyed by commissioner.

Estoppel.

Where the Arkansas Game and Fish Commission voluntarily appeared in a quiet title suit by the holder of a tax title to land claimed by the commission, but presented no claim to the disputed land, with the result that title was quieted in the tax title claimant, the commission was estopped by the decree from afterward bringing suit to quiet title in the commission. *Arkansas Game & Fish Comm'n v.*

Parker, 248 Ark. 526, 453 S.W.2d 30 (1970).

Sale of State Lands.

As state lands are not subject to taxation, a sale thereof for delinquent taxes is void and passes no title. *Fiddymment v. Bateman*, 97 Ark. 76, 133 S.W. 192 (1910).

Titles Conveyed by Commissioner.

This section has no reference whatever to titles conveyed by the Commissioner of State Lands, or, if it has such a reference, only the interest of the state in the land can be affected by it. *Cracraft v. Meyer*, 76 Ark. 450, 88 S.W. 1027 (1905).

22-5-403. Title to lands formed in navigable waters.

(a) All land which has formed or may form in the navigable waters of this state, and within the original boundaries of a former owner of land upon such waters, shall belong to and the title thereto shall vest in the former owner, his or her heirs or assigns, or in whoever may have lawfully succeeded to the right of the former owner therein.

(b) Nothing in this section shall be construed to affect the rights or interests of third parties in any such land acquired before the passage of this section.

History. Acts 1901, No. 127, §§ 1, 2, p. 197; C. & M. Dig., § 6783; Pope's Dig., § 8709; A.S.A. 1947, §§ 10-202, 10-203.

Publisher's Notes. In reference to the term "passage of this section," Acts 1901, No. 127, was signed by the Governor on April 26, 1901, and took effect on that date.

Acts 1971, No. 148, § 6, provided in part that the act did not repeal § 22-5-403.

Cross References. Islands formed in navigable waters are property of state, § 22-6-202.

RESEARCH REFERENCES

Ark. L. Rev. Real Property — Riparian Rights — Accretion, Reliction and Avulsion, 6 Ark. L. Rev. 68.

Lex Aquae Arkansas, 27 Ark. L. Rev. 429.

CASE NOTES

ANALYSIS

Purpose.
Applicability.
Adverse possession.
Effect of other laws.
Evidence.
Islands.
Manner of formation.
Prior vested rights.
Riverbeds.

Purpose.

It was the purpose of this section to give title to the former owner where his land reformed as an island within the boundaries of his original grant. But for this provision, the island would become the property of the state. *Knight v. Rogers*, 202 Ark. 590, 151 S.W.2d 669 (1941).

Applicability.

This section has no application to land not formed on an island in a river but built up as an accretion to plaintiff's original tract. *Gray v. Malone*, 142 Ark. 609, 219 S.W. 742 (1920).

This section was meant to apply only to islands emerging from the beds of navigable rivers. *United States v. Keenan*, 753 F.2d 681 (8th Cir. 1985).

Adverse Possession.

The state's title to an island in a navigable stream cannot be acquired by another by adverse possession. *Jones v. Euper*, 182 Ark. 969, 33 S.W.2d 378 (1930).

Effect of Other Laws.

Section 22-6-202 did not repeal this section. *Ward v. Harwood*, 239 Ark. 71, 387 S.W.2d 318 (1965).

Evidence.

The testimony of civil engineers who surveyed the land in controversy is competent in an action to determine the ownership of an island formed in a navigable stream. *Jones v. Hunter*, 126 Ark. 300, 189 S.W. 1068 (1916).

Evidence established that land in dis-

pute developed as an island and not as an accretion to river bank. *Glover v. Walter*, 252 Ark. 1293, 483 S.W.2d 713 (1972).

Islands.

Where a change in the course of a navigable river caused an island to form in front of plaintiff's land or within his original boundaries, which by accretion extended in front of the defendant's land and within his original boundaries, plaintiff's title was limited to the part of the island within his original boundaries. *Mills v. Prothro*, 143 Ark. 117, 219 S.W. 1017 (1920).

If land reforms as an island in the navigable stream within the original boundary of the former owner, it belongs to him and not to the state. *Wunderlich v. Cates*, 213 Ark. 695, 212 S.W.2d 556 (1948).

Additions, accretions, or relictions become the property of the adjoining riparian owner, but islands detached from the shore in a navigable stream and not within the original boundaries of the riparian tract belong to the state. *United States Gypsum Co. v. Greif Bros. Cooperative Corp.*, 389 F.2d 252 (8th Cir. 1968).

A question of fact remained as to the applicability of this section and, therefore, summary judgment was not appropriate where it was not clear whether a sandbar or an island formed in a river channel. *White v. J.H. Hamlen & Son Co.*, 67 Ark. App. 390, 1 S.W.3d 464 (1999).

Manner of Formation.

The decree of the chancery court would not be modified by the Supreme Court to award a riparian landowner title to land allegedly formed within his original boundaries where he did not argue that theory, but only the theory of acquisition by accretion. *Cummings v. Boyles*, 242 Ark. 923, 415 S.W.2d 571 (1967).

When the formation begins with a bar or an island detached and away from the shore, and by gradual filling in by deposit, or by gradual recession of the water, the

space between bar or island and mainland is joined together, it is not an accretion to the mainland in a legal sense, and does not thereby become the property of the owner of the mainland. *Cummings v. Boyles*, 242 Ark. 38, 411 S.W.2d 665 (1967).

Prior Vested Rights.

Where rights of parties became vested prior to the passage of this section, the rights were not affected by its passage. *Bush v. Alexander*, 134 Ark. 307, 203 S.W. 1028 (1918); *Simpson v. Martin*, 174 Ark. 956, 298 S.W. 861 (1927).

Riverbeds.

State lost title to the riverbed when the waterflow was diverted from the river to the cutoff and the river became nonnavigable. Title to the riverbed vested in the riparian owners at the time of such diversion, with the boundary between the owners at the thalweg. *United States v. Keenan*, 753 F.2d 681 (8th Cir. 1985).

Cited: *Garrison Furn. Co. v. Southern Enters., Inc.*, 245 Ark. 927, 436 S.W.2d 278 (1969).

22-5-404. Title to lands formed in nonnavigable lakes or abandoned river channels.

(a) The title to all lands which have formed or may form in the beds of nonnavigable lakes, or in abandoned river channels or beds, whether or not still navigable, which reformed lands or alluvia are above the ordinary high-water mark, shall vest in the riparian owners to the lands and shall be assessed and taxed as other lands.

(b) The lands referred to in subsection (a) of this section shall include those lands which have emerged or which may emerge by accretion, reliction, evaporation, drainage, or otherwise from the beds of lakes or from former navigable streams, whether by natural or artificial causes, or whether or not the lakes were originally formed from the channel or course of navigable or nonnavigable streams.

History. Acts 1945, No. 203, §§ 1, 2; 1953, No. 126, §§ 1, 2; A.S.A. 1947, §§ 10-204, 10-205.

CASE NOTES

ANALYSIS

Applicability.

Accretions to riparian land.

Islands.

Nonnavigable river channels.

Applicability.

This section is not applicable in a suit to determine location of a boundary between riparian owners on opposite sides of an abandoned river. *Gill v. Porter*, 248 Ark. 140, 450 S.W.2d 306 (1970).

Accretions to Riparian Land.

This section and § 22-5-405 provide only a means of confirming title in the adjacent riparian landowner of accretions to his or her property; accordingly, where evidence indicated that company was not

a riparian landowner, it followed that the deeds which the Commissioner of State Lands gave to company's predecessor in title were invalid. *River Land Co. v. McAlexander*, 10 Ark. App. 123, 661 S.W.2d 451 (1983).

Islands.

An island in a river must be of a permanent character, not merely surrounded by water when the river is high, but permanently surrounded by a channel of the river; it must not be a sandbar subject to overflow by the rise of the river and connected with the bank when the river is low. *Porter v. Arkansas W. Gas Co.*, 252 Ark. 958, 482 S.W.2d 598 (1972).

Nonnavigable River Channels.

Where a river channel became nonnav-

igable by reason of a cut-off, title to the riverbed, including a sandbar which was not an island formed by avulsion, reverted from the state and vested in the riparian

owners, the thalweg becoming the dividing line between them. *Porter v. Arkansas W. Gas Co.*, 252 Ark. 958, 482 S.W.2d 598 (1972).

22-5-405. Deeds to lands in lakes or rivers.

(a) The Commissioner of State Lands is empowered and authorized to execute deeds to lands described in § 22-5-404 to riparian owners upon application and the filing of proof of record ownership of adjacent lands and proof of proper survey of the lands, conveying all the right, title, and interest of the State of Arkansas to lands as have emerged or may emerge to the mean high-water mark of any such stream or lake.

(b) All applicants for deeds under this section shall, upon filing an application therefor, deposit with the Commissioner of State Lands the estimated cost of survey of the lands to be fixed by the Commissioner of State Lands. He or she shall thereupon direct the county surveyor of the county in which the lands are located, or some other competent surveyor to be selected by the Commissioner of State Lands, to accurately survey the lands and compile the field notes and plat the lands in reference to the survey of adjacent lands, by the extension of township, range, and section lines, and to file the field notes and plats in the office of the Commissioner of State Lands.

(c) Upon the filing of the field notes and plats, the Commissioner of State Lands shall pay for the cost of the survey of lands applied for out of the money deposited as provided in subsection (b) of this section.

(d) The applicant shall, after the filing of the field notes and survey, file affidavits of at least three (3) competent persons having full personal knowledge of the facts, stating that the lands applied for have actually emerged to high-water mark and are capable of cultivation, whereupon the Commissioner of State Lands may issue the deed upon the payment of a deed fee of five dollars (\$5.00).

History. Acts 1945, No. 203, §§ 3, 4; A.S.A. 1947, §§ 10-206, 10-207.

CASE NOTES

Deeds Invalid.

This section and § 22-5-404 provide only a means of confirming title in the adjacent riparian landowner of accretions to his or her property. Accordingly, where evidence indicated that company was not

a riparian landowner, it followed that the deeds which the Commissioner of State Lands gave to company's predecessor in title were invalid. *River Land Co. v. McAlexander*, 10 Ark. App. 123, 661 S.W.2d 451 (1983).

22-5-406. Limited quitclaim of streambed of Mulberry River.

(a) The State of Arkansas quitclaims, to the owners of adjacent lands, title to the streambed of the Mulberry River, excluding oil, gas, and other mineral rights underlying the stream, to the center of the stream. However, the state retains an easement to run with the land for free passage by the public over the land by canoe, boat, other water-

craft, swimming, wading, or walking, and for fishing, recreation, travel, commerce, and other purposes.

(b)(1) The State of Arkansas relinquishes and quitclaims to the owners of oil, gas, and other minerals underlying adjacent lands, and to their lessees, all right, title, and interest in and to the oil, gas, and other minerals underlying the bed of the Mulberry River.

(2) No affirmative action shall be required by the mineral owner or lessee of the State of Arkansas to enable the mineral owner or lessee to retain ownership of or leasehold interest in the minerals under the bed of the Mulberry River.

(3)(A) If the mineral owner or lessee desires record proof of his or her continued ownership of the oil, gas, and other minerals, he or she may file an application with the Commissioner of State Lands for a quitclaim deed covering the oil, gas, and other minerals under the bed of the river.

(B) If the lands have been surveyed and platted, the mineral owner may furnish the Commissioner of State Lands a copy of the survey and plat.

(C) If the survey and plat sufficiently identify the land, no further survey shall be required.

(4)(A) In the alternative, the mineral owner may file with his or her application a deposit of the estimated cost of a survey, and the Commissioner of State Lands shall direct the county surveyor of the county in which the lands are located, or some other competent surveyor, to make an accurate survey of the lands and to plat them in reference to the survey of adjacent lands and file the survey and plat in the office of the Commissioner of State Lands.

(B) Upon the filing of the survey and plat, the Commissioner of State Lands shall pay for the cost of the survey out of the money deposited as provided in subdivision (b)(4)(A) of this section.

(C) If the deposit is insufficient for that purpose, the Commissioner of State Lands may require an additional deposit.

(D) If any deposited funds remain after payment, they shall be refunded to the depositor.

(5) After the survey and plat are filed, the applicant shall file affidavits of at least two (2) competent persons having full personal knowledge of the facts, establishing that the applicant is the present owner or lessee of the minerals in and under the streambed.

(6) Upon receipt of the survey and affidavits, the Commissioner of State Lands may issue a quitclaim deed to the applicant upon the payment of a deed fee of one dollar (\$1.00). The quitclaim deed establishes that the state makes no claim to the oil, gas, and other minerals under the bed of the stream.

History. Acts 1981, No. 830, §§ 1, 2; 1981, No. 872, § 1; A.S.A. 1947, §§ 10-1027 — 10-1029.

A.C.R.C. Notes. Subsection (b) of this section was formerly codified as § 22-5-816.

RESEARCH REFERENCES

UALR L.J. Survey of Arkansas Law: the Concept of Navigability Provides an Answer If You Know Which Question to Ask, 25 UALR L.J. 175 (2002).
 Property, 4 UALR L.J. 233.
 Of Cows, Canoes, and Commerce: How

22-5-407. Sixteenth section school lands.

(a) Any person claiming to be the owner of land in this state known as sixteenth section school land, whose claim is based on a regular, unbroken chain of title for a period of not less than twelve (12) years, and to whose claim there has not been an adverse claimant for a period of not less than twelve (12) years, and the owner and those from whom he or she derived title have been in actual possession and have paid taxes thereon for a period of not less than twelve (12) years, and who is in actual possession at the time application is made to the state for a deed thereto, shall have all title, legal and equitable, that the State of Arkansas may have or appear to have in any such lands vested in the owner or parties and their grantees.

(b) The Commissioner of State Lands, upon proper proof being made to him or her, is directed to execute a deed conveying to the parties all the right, title, and interest that the state may have in the lands.

History. Acts 1905, No. 183, § 1, p. 472; 1911, No. 10, § 1; C. & M. Dig., §§ 9140, 9141; Acts 1921, No. 661, § 1; Pope's Dig., §§ 11768, 11769; Acts 1963, No. 525, § 1; 1971, No. 446, § 1; A.S.A. 1947, § 10-208.

Cross References. As to sixteenth section school lands, see § 6-13-108.

CASE NOTES

Proof of Ownership.

In a quiet title action to establish ownership to land under deed issued under this section, the burden is on the plaintiff to establish his allegations as to owner-

ship, and the deed, although presumptively valid, is only evidence of title to be considered in light of the other evidence. *Williams v. Campbell*, 254 Ark. 592, 495 S.W.2d 512 (1973).

22-5-408. State Bank lands.

(a) Where the claim of the State of Arkansas to any land conveyed to the Bank of the State of Arkansas under and by virtue of the Acts of the General Assembly of the State of Arkansas of January 31, 1843, and February 3, 1843, providing for the liquidation of the assets of the bank, and the Acts of January 4, 1845, and January 10, 1845, authorizing the officers of the bank to compromise debts due the bank and to take property in payment of the debts, and the Act of December 23, 1846, vesting the title in the State of Arkansas to all property so conveyed to the bank, conflicts with the title of any person who, together with those under whom he or she claims and from whom he or she deraigns title either by deed, devise, or inheritance, has been in continuous possession and paying the taxes assessed against the land for more than forty (40) years prior to the passage of this section, the State of Arkansas

relinquishes its title to the land in favor of the occupant and claimant thereof.

(b) When the owner or occupant shall present to the Commissioner of State Lands satisfactory proof that he or she and those under whom he or she claims and from whom he or she deraigns title have been in continuous possession of the land for a period of forty (40) years or have continuously paid the taxes thereon for a period of forty (40) years under color of title, it is the duty of the Commissioner of State Lands to execute to the owner, occupant, or claimant a quitclaim deed conveying to him or her all the title and interest of the State of Arkansas in the land, upon payment of a fee of five dollars (\$5.00).

History. Acts 1931, No. 245, §§ 1, 2; Pope's Dig., §§ 8623, 8624; A.S.A. 1947, §§ 10-209, 10-210. term "passage of this section," Acts 1931, No. 245, was signed by the Governor and became effective on March 31, 1931.

Publisher's Notes. In reference to the

22-5-409. Escheated corporation lands.

Where land has escheated to the state under the provisions of § 1 of Act of January 11, 1843, p. 56, the title of the state may be conveyed to the present owner by a quitclaim deed executed by the Commissioner of State Lands upon the filing with him or her of an application for the deed, accompanied by the affidavit of some credible, disinterested person showing that the applicant is the owner of the lands and that the taxes thereon have been paid for the past seven (7) years.

History. Acts 1937, No. 47, § 1; Pope's Dig., § 8749; A.S.A. 1947, § 10-211. idating sales of escheated corporation land, see Acts 1923, No. 564, and Acts

Publisher's Notes. For prior laws val- 1927, No. 224.

22-5-410. Overdue tax lands and internal improvement lands.

(a) Where the claim of the State of Arkansas to any land sold to the state under decree of the Pulaski County Chancery Court and under decree of the circuit and chancery courts of the various counties of the state, known as overdue tax decrees, and under decrees of the Pulaski County Chancery Court wherein various tracts of internal improvement lands were decreed to be sold and were sold back to the state, conflicts with the claim of any citizen or resident of the State of Arkansas who has been in possession of the land, or who, together with those under whom he or she claims and from whom he or she deraigns title by deed or inheritance, shall have paid the regular amount of county and state taxes assessed against the land, the taxes having been assessed against the land at the same rate as other lands to which the state has and had no claim were assessed, for twenty (20) years continuously prior to the passage of this section, the State of Arkansas relinquishes its title to the land in favor of the occupant and claimant thereof.

(b) When the owner or occupant shall present to the Commissioner of State Lands satisfactory proof that he or she and those under whom he

or she claims and from whom he or she derails title have been in continuous and undisturbed possession of the land for a period of twenty (20) years, or shall have continuously paid taxes thereon for a period of twenty (20) years under color of title, it is the duty of the Commissioner of State Lands to execute to the owner, occupant, or claimant a deed quitclaiming all the title and interest of the state in the land on payment to the Commissioner of State Lands of a fee of five dollars (\$5.00).

History. Acts 1921, No. 671, §§ 1, 2; Pope's Dig., §§ 1862, 1863, 8689, 8690; A.S.A. 1947, §§ 10-212, 10-213.

A.C.R.C. Notes. Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now

includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts..."

Publisher's Notes. In reference to the term "passage of this section," Acts 1921, No. 671, declared an emergency and was signed by the Governor on March 29, 1921.

RESEARCH REFERENCES

Ark. L. Rev. Tax Forfeiture Problems in the Examination of Abstracts, 12 Ark. L. Rev. 333.

22-5-411. Filing of deeds to state property.

(a) A copy of the deed or other primary evidence of title to realty belonging to the State of Arkansas shall be filed in the office of the Commissioner of State Lands and shall be preserved by the Commissioner of State Lands as the other public records and files of his or her office.

(b) The realty belonging to the State of Arkansas shall not, for the purposes of this section, include realty acquired by the State Highway Commission.

(c) The officer charged with the administration of the affairs of each state office, department, agency, or institution having under its supervision and management realty owned by the State of Arkansas shall file with the Commissioner of State Lands a copy of the deed or other primary evidence of title to such property conveyed under fee simple title, and acquired by the state through gift or purchase or otherwise, within sixty (60) days after the acquisition and shall likewise notify the Commissioner of State Lands when any lands are disposed of.

(d) The Commissioner of State Lands shall designate one (1) of his or her deputies to periodically call upon each state office, department, agency, and institution for the purpose of obtaining a copy of the deed or other primary evidence of title and for the purpose of determining whether the state office, department, agency, or institution has disposed of title to any state lands.

(e) A statement by the administrative officer of any state office, department, agency, or institution to the effect that the office, depart-

ment, agency, or institution does not supervise, control, or manage any realty owned by the state shall constitute sufficient compliance with this section.

(f) In the event any office, department, agency, or institution does supervise, control, or manage realty belonging to the state for which no evidence of title can be found, the administrative officer in charge of the office, department, agency, or institution shall conduct an investigation to ascertain the facts pertaining to the acquisition of the realty by the state. A report of the investigation shall be made to the Commissioner of State Lands within sixty (60) days following the conclusion of the investigation.

(g) In the event any state office, department, agency, or institution shall fail or refuse to comply with the provisions of this section, the Commissioner of State Lands shall report such failure or refusal to comply to the Governor, who shall notify the administrative officer of any such office, department, agency, or institution to immediately report to him or her the reasons for his or her failure or refusal to comply.

(h) Willful failure or refusal to comply with this section by any officer shall constitute nonfeasance in office.

History. Acts 1975, No. 147, §§ 1-5;
A.S.A. 1947, §§ 10-215 — 10-219.

SUBCHAPTER 5 — ACQUISITION OF FORESTLAND

SECTION.

- 22-5-501. Authority to acquire.
- 22-5-502. Methods of acquisition.
- 22-5-503. Exchange of lands.
- 22-5-504. Tax-forfeited lands — Distribution.
- 22-5-505. Quieting title to acquired lands.

SECTION.

- 22-5-506. Funding.
- 22-5-507. Cooperation with United States.
- 22-5-508. Management of forests.
- 22-5-509. Rules and regulations.
- 22-5-510. Records and reports.

Effective Dates. Acts 1959, No. 174, § 4: Mar. 4, 1959. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that great inequities have arisen as a result of Acts 1947, No. 409, in that counties in which state forestry lands are located receive a substantial portion of the proceeds from the sale of state forestry land timber which is credited to the County General Fund, none of which may be used by the school districts therein; and that a portion of these funds are needed in order to maintain an adequate standard of education. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace,

health and safety shall take effect and be in force from the date of its approval."

Acts 1970 (Ex. Sess.), No. 101, § 3: became law without Governor's signature, Mar. 28, 1970. Emergency clause provided: "It having been ascertained that the State of Arkansas, acting through the State Forestry Commission, has entered into an Agreement with the Government of the United States whereby the State of Arkansas has received control of certain forest lands and is to receive title to same and in return has agreed to make certain payments to the Government of the United States from the proceeds of the land so purchased; and that said agreement requires the payment of interest on

the purchase price; that the Government of the United States will cancel the sale if the interest is not paid; that such cancellation will be to the great harm and detriment to the State of Arkansas, it is hereby determined that it is necessary for the preservation of the public peace,

health and safety that the provisions of this act be made effective at once. Therefore, an emergency is declared to exist and the provisions of this act shall be in effect immediately upon its passage and approval."

22-5-501. Authority to acquire.

(a) The Arkansas Forestry Commission is authorized and empowered to acquire and hold in the name of the State of Arkansas title to lands which the commission determines, because of location, topographical, geological, and physical characteristics, are chiefly valuable for the production of forest crops, watershed protection, erosion and flood control, forestation, reforestation, and recreation.

(b) Lands, when so acquired, shall be appropriately named, designated, administered, protected, and developed as state forests.

History. Acts 1947, No. 409, § 1; 1963, No. 249, § 1; A.S.A. 1947, § 9-721. Holland Bottom tract, see Acts 1985, No. 11.

Publisher's Notes. As to purchase of

22-5-502. Methods of acquisition.

(a) Lands may be acquired by gift, devise, purchase, or exchange from any county, municipality, state or federal agency or department, person, firm, corporation, or association.

(b) The Arkansas Forestry Commission shall not purchase or acquire any lands until the purchase price is available and the title and conveyance thereto, except as to tax titles, are examined and approved by the Attorney General as conveying good and merchantable title.

History. Acts 1947, No. 409, § 2; A.S.A. 1947, § 9-722.

22-5-503. Exchange of lands.

The Arkansas Forestry Commission may exchange tracts of land acquired under the provisions of this subchapter for suitable land of equal value in furtherance of the administration and consolidation of these holdings and may sell and convey, upon terms requiring proper conservation practices, parts of tracts acquired under this subchapter suitable for cultivation.

History. Acts 1947, No. 409, § 3; A.S.A. 1947, § 9-723.

22-5-504. Tax-forfeited lands — Distribution.

(a) Any lands acquired by the Commissioner of State Lands in any county through tax sale, which are deemed by the Arkansas Forestry Commission to be suitable for forest purposes, may be conveyed to the state as forestlands by the proper officers of the county without reimbursement therefor.

(b) Upon the acquisition of any lands in the furtherance of this subchapter, a survey of the tax returns to the county from each tract of land for the previous ten (10) consecutive years shall be made to determine the average annual tax income to the county and the political subdivisions therein from each tract involved. In making this study, taxes rendered upon improvement value shall not be included.

(c)(1) The Arkansas Forestry Commission shall cause a record to be opened and kept showing, by counties, all lands in the State of Arkansas administered and managed by the commission as state forests and shall, annually on July 1, cause to be remitted to each county an amount equal to the average annual tax as determined in subsection (b) of this section. This amount is to be distributed as provided in subdivision (c)(2) of this section.

(2) The income received by each county shall be distributed as follows:

(A) Fifty percent (50%) to the county general fund;

(B) Fifty percent (50%) to the county school fund to be distributed by the county treasurer, within thirty (30) days from the date of receipt thereof, to the respective school districts of the county in the proportion that the area of state forestlands located in each school district bears to the total area of state forestlands within the county.

History. Acts 1947, No. 409, § 4; 1959, No. 174, § 1; 1961, No. 412, § 1; 1981, No. 666, § 1; A.S.A. 1947, § 9-724.

22-5-505. Quieting title to acquired lands.

Upon the written request of the Arkansas Forestry Commission, the Attorney General shall institute and prosecute to final decree all requisite suits to quiet the title of the state in and to lands acquired; and, in the prosecution of the suits, the state shall be exempted from the payment of costs.

History. Acts 1947, No. 409, § 5; A.S.A. 1947, § 9-725.

22-5-506. Funding.

(a) The purchase price of lands acquired shall be paid at the time of acquisition from the State Forestry Fund, and the acquisition shall not impose any liability upon the general credit or taxing power of the state.

(b) All lands acquired under the provisions of this subchapter shall become the property of the state.

(c) The Arkansas Forestry Commission is authorized, empowered, and directed to make requisite expenditures from the fund in executing the provisions of this subchapter and in protecting, developing, and administering the lands in the production, conservation, and marketing of forest products and in the forestation and reforestation of the lands.

History. Acts 1947, No. 409, §§ 6, 7; A.S.A. 1947, §§ 9-726, 9-727.

22-5-507. Cooperation with United States.

(a) The Arkansas Forestry Commission is authorized and directed to fully cooperate with the departments, officers, and agencies of the federal government to meet the requirements of the rules, regulations, and acts of Congress relating to the objectives of this subchapter and to accept all funds and lands that may be available for the furthering of the provisions of this subchapter.

(b) The commission is empowered to enter into such contracts and agreements with federal departments, officers, and agencies, not contrary to the laws of this state, as may be deemed necessary or convenient to the objectives of this subchapter.

(c) The commission is further empowered to pay to the federal government the amount of money specified in the agreements and contracts, including any payments of interest required by the contracts or agreements.

(d) All payments, whether for interest or otherwise, shall be made from the State Forestry Fund and shall not impose any liability upon the general credit or taxing power of the state.

History. Acts 1947, No. 409, § 8; 1970 (Ex. Sess.), No. 101, § 1; A.S.A. 1947, § 9-728.

22-5-508. Management of forests.

(a) It shall be the duty of the State Forester, in accordance with the provisions of this subchapter, the rules and regulations promulgated by the Arkansas Forestry Commission, and approved methods of forestry, to manage, control, protect, develop, utilize, and handle the lands in the state forests in such a manner as to best serve the greatest permanent advantage to the people of this state.

(b) Where lands in the state forests are suited for demonstration and education purposes, the commission shall promulgate plans and procedures by which agricultural youth organizations may take an active part in assisting in carrying out the development, control, utilization, and experimentation provided for by this subchapter.

(c) In the same manner as state school lands, forestlands may be leased by the commission for grazing, for the production of oil, gas, and other mineral or substances, and for other uses where the commission finds leasing and use will not militate against the purposes of this subchapter.

History. Acts 1947, No. 409, §§ 9, 10; 1949, No. 337, § 1; 1963, No. 249, § 2; A.S.A. 1947, §§ 9-729, 9-730.

22-5-509. Rules and regulations.

The Arkansas Forestry Commission is authorized and directed to approve, promulgate, and publish rules and regulations, and amendments or modifications thereof, reasonably required in directing and controlling the proper execution of the duties and attaining the objectives of this subchapter. These rules and regulations shall have the force and effect of law.

History. Acts 1947, No. 409, § 12; A.S.A. 1947, § 9-732.

22-5-510. Records and reports.

The Arkansas Forestry Commission shall cause a record of all its proceedings relating to state forests, including the date of acquisition, description, source of title, purchase price, amounts expended in the development of each tract, and the forest to which allotted, to be kept in the office of the commission, and shall make a biannual written report thereof to the Governor.

History. Acts 1947, No. 409, § 13; A.S.A. 1947, § 9-733.

SUBCHAPTER 6 — TRESPASS

SECTION.

- 22-5-601. Investigators.
- 22-5-602. Suit to recover value of cut timber and to restrain trespass.
- 22-5-603. Suit for ejectment and recovery of rental value.
- 22-5-604. Suit for cancellation of donation certificate.

SECTION.

- 22-5-605. Suit involving state title — Cutting or removing timber pending final determination.
- 22-5-606. Constitutional Officers Fund and State Central Services Fund.

Effective Dates. Acts 1919, No. 424, § 3: Mar. 27, 1919. Emergency declared.

Acts 1931, No. 125, § 8: became law without Governor's signature, Mar. 11, 1931. Emergency clause provided: "It is hereby declared that it is urgent that the state should protect its land and timber

against trespassers; therefore, an emergency is hereby declared and the immediate operation of this act being essential for the preservation of the public peace, health, and safety of the state, this act shall take effect and be in force from and after its passage."

22-5-601. Investigators.

(a) For the purpose of protecting the timber and lands of the state against trespass and to obtain reliable information upon which to predicate the proceedings provided for in this subchapter, the Attorney General shall have the authority to employ agents to make the necessary investigations and reports.

(b) The agents shall report to the Attorney General all cases wherein they discover any trespassing on the lands of the state and shall also investigate reports made by others as to such trespass.

(c) Different persons may, in the discretion of the Attorney General, be employed to make investigations, although not more than one (1) person shall be under employment at any given time.

(d) An agent shall receive for his or her compensation an amount not exceeding ten dollars (\$10.00) per day while actually engaged in service pursuant to this section to the exclusion of all other business, may be reimbursed for necessary expenses while so engaged, and shall file with the Attorney General an itemized verified statement of his or her expenses.

History. Acts 1931, No. 125, §§ 4, 5;
Pope's Dig., §§ 8729, 8730; A.S.A. 1947,
§§ 10-311, 10-312.

22-5-602. Suit to recover value of cut timber and to restrain trespass.

Whenever the Attorney General shall receive or obtain information that anyone is cutting timber upon state lands, it shall be the duty of the Attorney General to institute suit to recover the value of the timber that has been cut and to restrain further trespass upon the land.

History. Acts 1931, No. 125, § 1;
Pope's Dig., § 8726; A.S.A. 1947, § 10-306.

22-5-603. Suit for ejectment and recovery of rental value.

Whenever the Attorney General shall have information that anyone is in possession of land that has been forfeited to the state and the period of redemption has expired, he or she shall institute suit to eject the person from the land and to recover the rental value of the land during the time it was occupied after the period of redemption had expired.

History. Acts 1931, No. 125, § 2;
Pope's Dig., § 8727; A.S.A. 1947, § 10-307.

22-5-604. Suit for cancellation of donation certificate.

(a) Whenever the Attorney General shall receive information that any donee of state land has violated or failed to comply with any of the laws relating to the donation of state lands, the Attorney General shall file a complaint with the Commissioner of State Lands praying for the cancellation of the donation certificate.

(b) The complaint shall set forth the reason for the cancellation of the certificate, and a copy of the complaint shall be served on the donee ten (10) days before the matter is heard by the Commissioner of State Lands.

(c) The state and the donee may present affidavits as proof.

(d) If the decision of the Commissioner of State Lands shall be adverse to the donee, the donee shall have the right to appeal to the Circuit Court of Pulaski County from the decision.

History. Acts 1931, No. 125, § 3;
Pope's Dig., § 8728; A.S.A. 1947, § 10-310.

CASE NOTES**Failure to Contest or Appeal.**

Where copy of Attorney General's complaint that donation certificate was fraudulently procured was served on the donee, who failed to contest or to appeal from adverse determination, donee was precluded from relying upon donation certif-

icate as basis for issuance of donation deed and could not successfully plead the donation deed in ejectment action by owner of land prior to forfeiture for non-payment of taxes. *Stewart v. Hall*, 198 Ark. 493, 129 S.W.2d 238 (1939).

22-5-605. Suit involving state title — Cutting or removing timber pending final determination.

(a) In all suits pending in any courts of this state where the state is a party of record claiming title to, or any interest in, any real estate, the title to which is in controversy in the suit, neither the party claiming adversely to the state in the suit nor any other person, firm, or corporation, whether a party to the record in the cause or not, shall, pending a final determination of the litigation, cut or remove from the lands any trees, logs, or timber thereon, except as provided in this section.

(b) The court in which the cause of action is pending or the judge of the court in vacation may permit a party to the record in the cause, who is claiming in the cause of actions an interest adverse to the state in the lands and the trees, logs, or timber growing or being thereon, to cut or remove the trees, logs, or timber upon condition that the party shall file in the court, and in the cause, a petition praying such permission and containing a correct description of the particular lands on which the trees, logs, or timber desired to be cut or removed are situated, a correct estimate, by forty-acre tracts, of the trees, logs, or timber and the value of the trees, logs, or timber.

(c) The petition shall be duly verified.

(d) Upon reasonable notice to the adverse party, the petition, the allegations of which may be controverted, may be taken up by the court or judge in vacation and, if granted, shall be upon condition that the petitioners shall enter into a good and sufficient bond to the State of Arkansas. The bonds must be approved by the clerk of the court, in an amount not less than the reasonable cash market value of the trees or logs desired to be cut and removed, obligating the petitioner and his or her sureties to pay to the State of Arkansas all damages it may sustain by the granting of the petition, should it be finally determined in the cause that the state is the owner of the timber cut, of the logs cut and removed, or of any interest therein.

(e) It shall be unlawful for any person, firm, or corporation who has not complied with the provisions of this section to cut any growing timber situated on the lands referred to in the cause of action or to remove from the lands any logs or trees lying or being thereon.

(f) If it is deemed necessary to protect against such trespass and hold intact the rights of the state, pending a final hearing and determination of the cause, the court or the judge in vacation may, at the instance of the state and without bond, grant an injunction or restraining order prohibiting trespass until the cause is finally determined.

History. Acts 1919, No. 424, §§ 1, 2; C. §§ 8724, 8725; A.S.A. 1947, §§ 10-313, & M. Dig., §§ 6787, 6788; Pope's Dig., 10-314.

22-5-606. Constitutional Officers Fund and State Central Services Fund.

All amounts recovered for the state shall be paid to the Treasurer of State to be credited to the Constitutional Officers Fund and State Central Services Fund for the support of the office of the Commissioner of State Lands, and each agent's per diem and expenses shall be paid from the fund.

History. Acts 1931, No. 125, § 6; A.S.A. 1947, § 10-312n.

SUBCHAPTER 7 — FIELD NOTES AND RECORDS

SECTION.

22-5-701. Field notes and other papers as public records — Right to inspect and copy.

22-5-702. Copies, extracts, etc. — Recording — Admissibility as evidence.

SECTION.

22-5-703. Counties may obtain field notes — Appropriations.

22-5-704. Fees for copies.

22-5-705. Arkansas Administrative Procedure Act.

Cross References. County surveyor to survey lands on application in accordance with entry, § 14-15-706.

Effective Dates. Acts 1854, p. 16, § 5: effective on passage.

Acts 1857, p. 67, § 3: effective on passage.

Acts 1881, No. 12, § 7: effective on passage.

Acts 1893, No. 111, § 2: effective on passage.

Acts 1933, No. 155, § 3: Mar. 25, 1933. Emergency clause provided: "Whereas, the United States District Land Office in Little Rock was discontinued on January 31, 1933, and all records pertaining to said office were transferred to the General Land Office in Washington, D.C., wherefore it is determined that great inconvenience does now attend the citizens of this state in obtaining information contained in said records, and for that reason an emergency is declared to exist. Therefore, for the preservation of the public peace, health and safety, it is imperative that this act become effective without delay and it shall upon its passage and approval become immediately effective."

Acts 1939, No. 121, § 4: Feb. 22, 1939. Emergency clause provided: "Whereas, great inconvenience now attends the citizens of this state in obtaining information contained in said records by reason of

their not being in the custody and keeping of Commissioner of State Lands of the State of Arkansas, an emergency is found and is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, it shall, upon its passage and approval, become immediately effective."

Acts 2001, No. 1417, § 12: Apr. 9, 2001. Emergency clause provided: "It is found and determined by the General Assembly that the fiscal year begins July 1, and it is efficient to establish the Division of Land Surveys within the Office of the Commissioner of State Lands on the same date as the fiscal year begins. If the division were transferred at a later date, the budget for the Arkansas Geological Commission and the Office of the Commissioner of State Lands would be confusing and irreparably harmed. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

22-5-701. Field notes and other papers as public records — Right to inspect and copy.

(a) The field notes, transcripts, documents, maps, plats, records, and other papers kept in the office of the Commissioner of State Lands are declared to be public records.

(b) Under the authority and direction of the Commissioner of the General Land Office of the United States, any deputy surveyor or other agent of the United States shall have free access to any such public records for the purpose of taking extracts therefrom or making copies thereof, without charge of any kind.

(c) The Commissioner of State Lands and the clerks in his or her office shall be allowed to take extracts from or make copies of any of the public records in the office of the Commissioner of State Lands.

(d) All other persons may have the right to inspect the public records under the supervision of the Commissioner of State Lands or the clerks in his or her office.

(e) The Commissioner of State Lands shall assign a space in his or her office for the reception and safekeeping of records and shall allow free access to the records by the authorities of the United States.

History. Acts 1881, No. 12, §§ 2, 5, p. 18; C. & M. Dig., §§ 4745, 4748; Acts 1933, No. 155, § 2; Pope's Dig., §§ 5447, 5824, 5827, 5833; Acts 1939, No. 121, § 2; A.S.A. 1947, §§ 10-1202, 10-1205, 10-1207.

Publisher's Notes. Acts 1881, No. 12, § 1, authorized the Commissioner of State Lands to take charge of the field notes, maps, records, and other papers pertaining to surveys of the public lands

and land titles in Arkansas, which were formerly in the office of the Surveyor-General of the District of Arkansas.

Acts 1933, No. 155, § 1, as amended by Acts 1939, No. 121, § 1, provided that the Commissioner of State Lands take charge of all transcripts, documents, records, field notes, maps, plats, and other papers formerly kept in the United States District Land Office in Little Rock, Arkansas.

22-5-702. Copies, extracts, etc. — Recording — Admissibility as evidence.

(a) All certified transcripts and copies of any of the public records in the office of the Commissioner of State Lands, properly certified by the Commissioner of State Lands, shall be entitled to be recorded in all deed records and shall be received in evidence in all courts of this state in the same manner and with like effect as the originals.

(b) Any certified extract, entry of field notes, maps, records, or other papers, properly certified by the Commissioner of State Lands, shall be received in evidence in all courts of this state in the same manner as if the copy of the entire field notes, maps, records, or other papers had been produced.

History. Acts 1881, No. 12, §§ 3, 4, p. 18; C. & M. Dig., §§ 4746, 4747; Pope's Dig., §§ 5825, 5826; Acts 1939, No. 121, § 3; A.S.A. 1947, §§ 10-1203, 10-1204, 10-1208.

RESEARCH REFERENCES

Ark. L. Rev. Documentary Evidence — Arkansas, 15 Ark. L. Rev. 79.

CASE NOTES

Parol Evidence.

A certified copy of an official survey made by a county surveyor is prima facie correct but any duly qualified surveyor may testify as to its correctness. *Russell v. State*, 97 Ark. 92, 133 S.W. 188 (1910).

It was not error to refuse to permit a surveyor to testify as to what the state

official maps and plats show as to the boundary line of the state; such maps and plats being themselves the best evidence and provable by introduction of the originals or by duly certified copies. *Russell v. State*, 97 Ark. 92, 133 S.W. 188 (1910).

22-5-703. Counties may obtain field notes — Appropriations.

(a)(1) The county court of each county is authorized to ascertain at what price the field notes of survey of the lands in the county, together

with township maps thereof, can be obtained. After the court shall have obtained a knowledge of the amount of expenses necessary to procure the field notes and township maps, it shall cause the price to be posted in an advertisement, at the courthouse door, requesting all the justices of the county to attend the next county court.

(2) If a majority of the justices present shall vote in favor of paying the ascertained price, then the county court may proceed to procure the field notes and maps from the office of the Commissioner of State Lands. The field notes and maps so procured, certified by the Commissioner of State Lands, shall be lodged in the office of the clerk of the county court.

(b) For putting this section into effect, each county is authorized to make the necessary appropriations out of any money in the county treasury not otherwise appropriated.

History. Acts 1854, §§ 1, 4, p. 16; Acts 1857, § 1, p. 67; C. & M. Dig., § 4749; Pope's Dig., § 5828; A.S.A. 1947, §§ 10-1209 — 10-1211.

22-5-704. Fees for copies.

(a) The clerk of each county court shall issue, when called by any person, a copy of the field notes and maps of the county and is authorized to charge fifty cents (50¢) for each copy.

(b) No copy shall contain more than three hundred twenty (320) acres without an additional charge of fifty percent (50%) on such enlargement on any one (1) copy, to be paid by the applicant.

(c) The Commissioner of State Lands is directed to furnish free of charge to any county in this state which has lost its field notes of land surveys of the county by the burning of its courthouse copies of the field notes relating to the survey of lands in the county, at as early a time as may be, after the county judge of the county shall file with the Commissioner of State Lands an application for copies of the lost or destroyed field notes.

(d) Each county surveyor shall have the liberty of copying any of the field notes and maps kept in the county courthouse for his or her own use, without charge of any kind.

(e) It shall be the duty of the county clerk of each county to make a true report of all moneys collected by him or her for copies issued of the field notes and maps to the county court at settlement term in each year.

(f) It shall be the duty of the court to charge the clerk thirty percent (30%) on all moneys collected by him or her pursuant to this section, and the court shall order the sheriff of the county to collect the percentage so charged and pay it over to the county treasurer, to be used as other county funds.

History. Acts 1854, §§ 2, 3, p. 16; Acts 1857, § 2, p. 67; 1893, No. 111, § 1, p. 196; C. & M. Dig., §§ 1905, 4750-4752, 6584; Pope's Dig., §§ 2422, 5829-5831, 8615; A.S.A. 1947, §§ 10-1212 — 10-1215.

22-5-705. Arkansas Administrative Procedure Act.

The office of the Commissioner of State Lands shall be subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2001, No. 1417, § 9.

SUBCHAPTER 8 — MINERAL, TIMBER, AND OTHER RESOURCES

SECTION.

- 22-5-801. Leases and permits — Purpose of this section and §§ 22-5-802 — 22-5-813.
- 22-5-802. Leases and permits — Exemptions for state agencies.
- 22-5-803. Leases and permits — Penalties.
- 22-5-804. Leases and permits — Natural Resources Committee — Arkansas State Game and Fish Commission.
- 22-5-805. Leases and permits — Requirements — Application — Terms.
- 22-5-806. Leases and permits — Offer to pay minimums — Notice — Award.
- 22-5-807. Leases and permits — Notice to, and recommendations from, interested agencies.
- 22-5-808. Leases and permits — Records — Fees — Disposition of funds.

SECTION.

- 22-5-809. Leases and permits — Monthly statements — Payment of severance tax.
- 22-5-810. Leases and permits — Liability — Transferability — Renewal.
- 22-5-811. Leases and permits — Existing ones to continue.
- 22-5-812. Leases and permits — Rules and regulations.
- 22-5-813. Leases and permits — Compliance with this section and §§ 22-5-801 — 22-5-812.
- 22-5-814. Removal of sand or gravel from navigable waters.
- 22-5-815. Mineral rights in lands covered by artificially created navigable waters.
- 22-5-816. [Transferred.]
- 22-5-817. [Repealed.]
- 22-5-818. Commercial mining at Crater of Diamonds State Park.

A.C.R.C. Notes. Acts 1993, No. 509, § 2, provided, in part: "All rules and regulations currently in effect shall inure to the Commissioner of State Lands for the implementation of this act."

Cross References. Removal of trees growing on navigable rivers or streams, penalty, § 5-72-102.

Preambles. Acts 1965, No. 112, contained a preamble which read: "Whereas, agencies of the United States and the State of Arkansas have been, are now, and in the future will be engaged in work on, in and around navigable streams in the State of Arkansas; and

"Whereas, it is necessary from time to time for said agencies to create lakes or to cut new channels, thereby causing land to be inundated by navigable waters; and

"Whereas, when said agencies acquire land for the purpose of inundation they frequently do not purchase or condemn

the oil, gas and other minerals and do not pay the mineral owner compensation for the minerals; and

"Whereas, once the land becomes inundated by navigable waters it is not certain under existing law whether such minerals remain in private ownership vested in the original mineral owners, and their assigns, or whether the title to the minerals then passes to the State of Arkansas, or thereafter passes to the state after seven years of continuous inundation by navigable waters; and

"Whereas, it could be inequitable and unconscionable for the State of Arkansas to acquire title to the minerals under lands covered by artificially created navigable water without compensation to the private mineral owners;

"Therefore..."

Effective Dates. Acts 1919 (2nd Ex.

Sess.), No. 262, § 5: Oct. 21, 1919. Emergency declared.

Acts 1941, No. 424, § 2: effective on passage.

Acts 1965, No. 112, § 6: Feb. 23, 1965. Emergency clause provided: "It having been found by the General Assembly of the State of Arkansas that the present law concerning ownership of the oil, gas and other minerals in and under lands covered by artificially created navigable waters is not clear, and that it would be unconscionable and inequitable for the owners to lose and the State of Arkansas to acquire title to such minerals simply by operation of law and without payment of compensation therefor, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 524, § 15: Mar. 21, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws relating to the granting of leases and permits to take timber, sand, gravel, oil and gas, and other minerals from state-owned lands are inadequate to properly protect the state lands and to assure the state of adequate compensation for taking such timber, sand, gravel, oil and gas and other minerals from such lands; that this act is designed to correct this situation by establishing appropriate procedures therefor and making provision for the receipt of adequate compensation therefor by the state and its institutions and agencies, and should be given effect at the earliest possible date. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977, No. 572 § 6: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two-year period; that the effectiveness of this act on July 1, 1977 is essential to the operation of the agency for which the appropriations in this act are provided, and that in the event of an extension of the Regular Session, the delay in the

effective date of this act beyond July 1, 1977 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1977."

Acts 1981, No. 684, § 11: Mar. 23, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws relating to the granting of leases and permits to take timber, sand, gravel, oil and gas, and other minerals from state-owned lands are inadequate to properly protect the state lands and to assure the state of adequate compensation for taking such timber, sand, gravel, oil and gas and other minerals from such lands; that this act is designed to correct this situation by establishing appropriate procedures therefor and making provision for the receipt of adequate compensation therefor by the state and its institutions and agencies. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 691, § 19: this section effective Mar. 1, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the various boards, commissions, departments, agencies, and services transferred to the Department of Commerce under the provisions of Acts 1971, No. 38, as amended, could perform their duties more efficiently as independent agencies; that the agencies and services consolidated within the Department of Commerce under Acts 1971, No. 38, are so diverse in their purposes and duties that it is difficult for the Administrator of said Department to exert leadership in the operation of such agencies and programs; and, that the abolishment of the Department of Commerce and its central services would result in financial savings which could be best used for the support and operation of other essential services of government, and that the immediate passage of this act is necessary to provide for the repeal of the Department of Commerce and for the

transition of the various departments, agencies, boards, commissions, and programs and services within said Department to an independent status, as provided herein. Therefore, an emergency is hereby declared to exist and this act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect as follows: Section 15 of this act shall be effective from and after March 1, 1983, and the remaining provisions of this act shall be effective on the close of business June 30, 1983 and thereafter.”

Acts 1993, No. 509, § 11: July 1, 1993. Emergency clause provided: “It is hereby found and determined by the Seventy-Ninth General Assembly, that the Consti-

tution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1993.”

RESEARCH REFERENCES

Am. Jur. 52 Am. Jur. 2d, Logs, § 49 et seq.

53A Am. Jur. 2d, Mines, §§ 33-37.
C.J.S. 58 C.J.S., Mines, §§ 138, 195.

CASE NOTES

ANALYSIS

- Applicability.
- Approval of governor.
- Commission by federal government.
- Corporate charter.
- Excessive acreage.
- Implied repeal.
- Injunction.
- Navigable river.
- Protection of lease.
- Reconsideration of lease.
- Taxation.

Applicability.

Prior acts controlling the taking of sand and gravel from the beds of navigable rivers were held to apply to sand and gravel in the beds of navigable streams over which the state has jurisdiction wholly or in part. Union Sand & Material Co. v. State, 127 Ark. 456, 192 S.W. 380 (1917) (decision under prior law).

Approval of Governor.

A lease of mining rights in state-owned property not authorized by statute could not be validated by the approval of the Governor and Attorney General. Pulaski Mining Co. v. Vance, 185 Ark. 653, 48 S.W.2d 834 (1932) (decision under prior law).

Commission by Federal Government.

Commission to appellant by a department of the United States government to erect a structure on a river does not give the appellant any affirmative right to appropriate sand from the riverbed without complying with Arkansas law. Union Sand & Material Co. v. State, 127 Ark. 456, 192 S.W. 380 (1917) (decision under prior law).

Corporate Charter.

The state holds the beds of the navigable streams for the common use of its citizens and, by issuing a charter to a corporation, did not bind itself not to change the terms upon which the material can be taken out of the beds of the stream. Southern Sand & Material Co. v. State ex rel. Att’y Gen., 121 Ark. 1, 180 S.W. 219 (1915) (decision under prior law).

Excessive Acreage.

Where lease for removal of sand and gravel contained more acreage than lessee could use, Commissioner of Revenues (now the Director of the Department of Finance and Administration) could reconsider lease, revoke that part which was not necessary for lessee’s use, and release it to another. Morley v. Berg, 218 Ark. 195, 235 S.W.2d 873 (1951) (decision under prior law).

Implied Repeal.

Since the language of §§ 22-5-801 — 22-5-813 intended to cover anew and exclusively the subject of removal of sand and gravel from navigable streams and substituted those sections for Acts 1971, No. 232, thus creating a uniform system of removal of sand and gravel from the beds of all the navigable streams, §§ 22-5-801 — 22-5-813 impliedly repealed the 1971 act. *White River Sand & Gravel Removal Comm'n v. Hayes Bros. Land & Timber Co.*, 259 Ark. 283, 532 S.W.2d 191 (1976).

Injunction.

The Commissioner of Revenues (now the Director of the Department of Finance and Administration) had authority to ask in his name an injunction to prevent illegal taking of state property. *Morley v. Berg*, 216 Ark. 562, 226 S.W.2d 559 (1950) (decision under prior law).

Navigable River.

Evidence in a riparian owner's suit to recover the value of gravel taken from the bed of a river was held to show that the stream was navigable. *Lutesville Sand & Gravel Co. v. McLaughlin*, 181 Ark. 574, 26 S.W.2d 892 (1930) (decision under prior law).

Protection of Lease.

There is an implied covenant upon the part of the lessee to exercise reasonable care to protect the lease against trespassers. *Thompson v. Clark*, 221 Ark. 955, 257 S.W.2d 42 (1953) (decision under prior law).

Reconsideration of Lease.

While the Commissioner of Revenues (now the Director of the Department of Finance and Administration) could not arbitrarily cancel the state's lease, in whole or in part, as long as the lessee performs his duty, it does not follow that later events may not warrant a reconsideration of the area to be held exclusively by the lessee. *Thompson v. Clark*, 221 Ark. 955, 257 S.W.2d 42 (1953) (decision under prior law).

Taxation.

Prior law requiring payment to the state for sand and gravel taken from the beds of navigable streams did not levy a tax, but provided a method of utilizing the common property of the state for the benefit of the citizens. *State ex rel. Moose v. Southern Sand & Material Co.*, 113 Ark. 149, 167 S.W. 854 (1914) (decision under prior law).

22-5-801. Leases and permits — Purpose of this section and §§ 22-5-802 — 22-5-813.

It is the purpose and intent of this section and §§ 22-5-802 — 22-5-813 to charge the office of the Commissioner of State Lands with the authority and responsibility for considering applications for and granting leases and permits for the taking of sand, gravel, oil, natural gas, casinghead gas, coal and other minerals, and timber from the beds and bars of navigable rivers and lakes in this state or from any other lands or interests in lands held in the name of the State of Arkansas or any state agency or institution, excluding tax-forfeited lands and minerals, and to supervise activities on state-owned lands by leaseholders and permittees.

History. Acts 1975, No. 524, § 13; A.S.A. 1947, § 10-1026; Acts 1993, No. 509, § 1.

22-5-802. Leases and permits — Exemptions for state agencies.

(a) The provisions of this section and §§ 22-5-801 and 22-5-803 — 22-5-813 shall not be applicable to the severance, sale, or other

disposition of sand, gravel, timber, or minerals salvaged, severed, or removed by a state agency from lands held in the name of or managed by the agency if the sand, gravel, timber, or minerals are salvaged, severed, or removed in the course of managing, developing, and improving the lands by the state agency. This exemption shall not apply to sales for commercial purposes.

(b) Any state agency, department, or institution or any county, municipality, or other division of government desiring to sever or take any sand, gravel, timber, or minerals from any lands held in the name of or managed by the state or a state agency or from the beds and bars of rivers in this state, other than lands held in the name of or managed by the agency or division of government so desiring, shall obtain a permit to do so from the office of the Commissioner of State Lands but shall not be required to comply with the bid procedures contained in §§ 22-5-801 — 22-5-813 or to pay any fee, royalty, or taxes otherwise required by §§ 22-5-801 — 22-5-813.

(c) The provisions of this section and §§ 22-5-801 and 22-5-803 — 22-5-813 relating to the authority to lease and permit lands held in the name of or managed by the Arkansas State Game and Fish Commission shall not be applicable to the lands of that agency. The commission shall retain control over the procedures for awarding and shall retain the authority over the issuance of leases for the mineral rights and of permits for the rights to produce and sever minerals from lands held in their name or managed by them. Provided, that the commission shall use the same requirements, procedures, standards, and methods required under §§ 22-5-801 — 22-5-813 for other state agencies to lease mineral rights and to issue permits to produce and sever minerals.

History. Acts 1975, No. 524, §§ 11, 12; 1024, 10-1025; Acts 1991, No. 537, § 1; 1981, No. 684, §§ 8, 9; A.S.A. 1947, §§ 10- 1993, No. 509, § 1.

22-5-803. Leases and permits — Penalties.

(a) If any person, firm, company, corporation, or association shall remove any sand, gravel, oil, natural gas, casinghead gas, coal or other minerals, or any timber from the beds or bars of navigable rivers and lakes in this state or from any other lands or interest in lands held in the name of the State of Arkansas without first obtaining a lease or permit to do so from the office of the Commissioner of State Lands, that person, firm, company, or corporation shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than three hundred dollars (\$300) and not more than one thousand dollars (\$1,000). Each day of unauthorized taking shall constitute a separate offense.

(b) In addition to the fine mentioned in subsection (a) of this section, the State of Arkansas may bring suit in the name of the state to recover the value of the sand, gravel, oil, natural gas, casinghead gas, coal or other minerals, or timber which has been illegally removed, as well as all severance taxes and royalties due as a result of the removal.

History. Acts 1975, No. 524, § 9; A.S.A. 1947, § 10-1022; Acts 1993, No. 509, § 1.

22-5-804. Leases and permits — Natural Resources Committee — Arkansas State Game and Fish Commission.

(a) The Natural Resources Committee created by this section shall be composed of the Director of the Department of Finance and Administration or his or her designee, the Director of Production and Conservation of the Oil and Gas Commission, the State Geologist, the State Forester, the Executive Director of the Arkansas Soil and Water Conservation Commission, the Commissioner of State Lands, the Executive Secretary of the Arkansas State Game and Fish Commission, the Director of the Department of Parks and Tourism or his or her designee, the Director of the Arkansas Department of Environmental Quality, and the Director of the Arkansas Natural Heritage Commission.

(b) The chair of the committee shall be the Commissioner of State Lands.

(c) The committee shall establish a schedule of minimum fees and royalties, as well as the terms and conditions for various types of permits and leases. No permit or lease shall be granted for less than the minimums prescribed in the schedule.

(d) The committee shall have the authority to change the schedule of minimum fees and royalties and the terms of permits and leases.

(e) The Arkansas State Game and Fish Commission shall have the authority, for all lands held in the name of and managed by its agency:

(1) To establish a schedule of minimum fees and royalties, as well as the terms and conditions for various types of permits and leases for Arkansas State Game and Fish Commission lands;

(2) To take bids on and to award the leases and permits to produce or sever minerals from those lands and to set up application procedures and fees for those leases and permits;

(3) To set the length of time for leases or permits to expire and the terms and conditions for their transfer or renewal;

(4) To set the minimum fees and royalties for leases and permits and to ensure that severance taxes on minerals from such leases or permits are paid to the proper agencies; and

(5) Shall have such other duties, responsibilities, and authority required for the issuance of mineral leases and permits under §§ 22-5-801 — 22-5-813 for other state lands.

History. Acts 1975, No. 524, § 2; 1981, No. 684, § 1; 1983, No. 691, § 15; 1985, No. 1035, § 1; A.S.A. 1947, §§ 10-1015, 10-1015.2, 10-1015.3; Acts 1991, No. 537, § 2; 1993, No. 509, § 1; 1999, No. 1164, § 177.

Amendments. The 1999 amendment substituted "Department of Environmental Quality" for "Department of Pollution Control and Ecology" in (a).

22-5-805. Leases and permits — Requirements — Application — Terms.

(a) No person, firm, company, corporation, or association shall take any sand, gravel, oil, natural gas, casinghead gas, coal or other minerals, or sever any timber, from the beds or bars of navigable rivers and lakes in this state or from any other lands or interest in lands held in the name of the State of Arkansas or any agency, department, or institution of the state, excluding tax-forfeited lands and minerals, unless that person shall have first procured a lease or permit to do so from the office of the Commissioner of State Lands.

(b)(1) Any person, firm, company, corporation, or association desiring to take sand, gravel, oil, natural gas, casinghead gas, coal or other minerals, or to sever any timber, from state-owned lands shall make application for a lease or permit to do so to the office of the Commissioner of State Lands.

(2) Each application shall be on forms prescribed by the office of the Commissioner of State Lands and shall contain such information as shall be prescribed by the Commissioner of State Lands regarding the applicant and the business of the applicant, the sand, gravel, minerals, or timber proposed to be removed from the lands under the lease or permit, and such other information as the Commissioner of State Lands shall deem necessary and appropriate to properly protect the interest of the state and to assure that the leaseholder will in good faith carry out all his or her responsibilities under the lease or permit.

(c)(1) Every lease or permit issued under the provisions of this section and §§ 22-5-801 — 22-5-804 and 22-5-806 — 22-5-813 shall define the limit of the area from which the lessee or permittee shall be permitted the exclusive right to take the sand, gravel, minerals, or timber designated in the lease or permit.

(2) Each lease or permit issued by the Commissioner of State Lands under the provisions of this section and §§ 22-5-801 — 22-5-804 and 22-5-806 — 22-5-813 shall be for a specific term as may be determined by the Commissioner of State Lands; shall require that reasonable commercial production of the sand, gravel, mineral, or timber covered by the lease or permit shall commence within a specified period of time as determined by the Commissioner of State Lands; and shall provide that the lease or permit shall automatically terminate unless commercial production is commenced within the time prescribed unless the time is extended by the Commissioner of State Lands upon a showing that expenses have been incurred and actual operations are in the process of completion for the commercial production of the oil, natural gas, casinghead gas, sand, gravel, coal or other minerals, or the severance of timber under the lease or permit.

(d) Once reasonable commercial production is commenced under any lease or permit issued under this section and §§ 22-5-801 — 22-5-804 and 22-5-806 — 22-5-813, the lease or permit shall automatically terminate if commercial production is discontinued for a period of six (6) months or such other period as may be prescribed in the lease.

History. Acts 1975, No. 524, § 1; A.S.A. 1947, § 10-1014; Acts 1993, No. 509, § 1.

CASE NOTES

ANALYSIS

Applicability.

Development of property.

Applicability.

Prior law governing removal of sand and gravel did not apply to those who removed sand or gravel for personal or private use. *C.M. Johnson Sand & Gravel Co. v. Quarles*, 121 Ark. 601, 182 S.W. 283 (1916) (decision under prior law).

Development of Property.

There is an implied obligation on the

part of the lessee to develop the entire property so that the lessor may obtain the expected income that induced him to grant the lease. *Thompson v. Clark*, 221 Ark. 955, 257 S.W.2d 42 (1953) (decision under prior law).

Cited: *White River Sand & Gravel Removal Comm'n v. Hayes Bros. Land & Timber Co.*, 259 Ark. 283, 532 S.W.2d 191 (1976).

22-5-806. Leases and permits — Offer to pay minimums — Notice — Award.

(a) Any person applying for a lease or permit under the provisions of this section and §§ 22-5-801 — 22-5-805 and 22-5-807 — 22-5-813 shall offer in the application to pay at least the minimums prescribed in the schedule for the lease or permit.

(b)(1) Upon receipt of an application for a lease or permit, the office of the Commissioner of State Lands shall determine whether issuing a permit or lease would be in the best interests of the State of Arkansas. If so, the Commissioner of State Lands, within ten (10) days after that determination, shall cause to be published in a newspaper of general circulation in this state for no fewer than three (3) consecutive days, and in a newspaper of general circulation in the county or counties in which the property is located for not less than one (1) day, a notice that an application has been filed.

(2) The notice shall contain a description of the permit or lease sought, the minimum fee or royalty, and the terms and conditions prescribed for the permit or lease and shall state that persons may bid on the lease or permit by filing a sealed bid in writing with the office of the Commissioner of State Lands within the time specified in the publication.

(3) All bids shall be submitted not less than twenty (20) days from the last day of publication.

(c)(1) If no other bids for the lease or permit are filed with the Commissioner of State Lands within the specified time period, the lease or permit may be awarded to the person applying therefor.

(2) If other bids are received, the lease or permit may be awarded to the highest bidder, but if two (2) or more bids are, in the judgment of the Commissioner of State Lands, reasonably close, the Commissioner of State Lands may require an open auction between the high bidders.

(3) After the bidding process is completed, the Commissioner of State Lands, with the recommendations of the Natural Resources Committee, may reject all offers considered unreasonable or may establish terms considered reasonable and in the best interest of the state, which the highest bidder may accept, without further advertising by the state.

History. Acts 1975, No. 524, § 2; 1981, No. 684, § 1; A.S.A. 1947, § 10-1015; Acts 1993, No. 509, § 1.

22-5-807. Leases and permits — Notice to, and recommendations from, interested agencies.

(a) When an application for a lease or permit is filed with the Commissioner of State Lands for the taking or production of any sand, gravel, oil, natural gas, casinghead gas, coal, or other minerals or the severance of any timber from state-owned lands, the Commissioner of State Lands shall so notify the Arkansas Geological Commission, the Arkansas Soil and Water Conservation Commission, the Oil and Gas Commission, the Arkansas State Game and Fish Commission, the Department of Parks and Tourism, the Arkansas Department of Environmental Quality, the Arkansas Forestry Commission, and any other appropriate state agency which has or may have a particular interest in the area proposed to be covered by the lease or permit.

(b) Any interested agency shall have an opportunity to investigate the proposed production or taking of sand, gravel, or minerals or the severance of timber under the lease or permit and to report its findings and recommendations to the office of the Commissioner of State Lands, including any recommendations for conditions or limitations to be imposed on the lessee or permittee with respect to the production of sand, gravel, minerals, or the severance of timber under the lease or permit, within the time specified in the notice.

(c) The Commissioner of State Lands may deny an application or may grant a permit or lease subject to such conditions and requirements as he or she deems appropriate to properly protect the interests of the State of Arkansas.

(d) No permit or lease shall be granted on interests held in the name of or managed by a state agency or institution without the written consent of the agency or institution.

(e) The issuance of a permit or lease shall not be unreasonably delayed or denied without justifiable cause.

History. Acts 1975, No. 524, § 3; 1981, No. 684, § 2; A.S.A. 1947, § 10-1016; Acts 1993, No. 509, § 1; 1999, No. 1164, § 178.
Amendments. The 1999 amendment

substituted "Arkansas Department of Environmental Control" for "Department of Pollution Control and Ecology" in (a).

22-5-808. Leases and permits — Records — Fees — Disposition of funds.

(a) The office of the Commissioner of State Lands shall maintain a permanent record of all leases and permits issued under this section and §§ 22-5-801 — 22-5-807 and 22-5-809 — 22-5-813.

(b)(1) The person, firm, company, corporation, or association making application or filing a competitive bid for a lease or permit with the State of Arkansas shall pay a fee to cover the cost of processing its application.

(2) The amount of the fee shall be set by the Commissioner of State Lands and shall be deposited in the State Treasury as cash funds and credited to the Severed Resources Fund.

(c)(1) The funds shall be used to pay for the advertising, processing, and recording of applications received.

(2) Fund balances in the Severed Resources Fund in excess of five thousand dollars (\$5,000) on June 30 of each year shall be transferred and credited to the General Revenue Allotment Reserve Fund no later than the August 15 following.

History. Acts 1975, No. 524, § 4; 1977, No. 572, § 2; 1981, No. 684, § 3; A.S.A. 1947, § 10-1017; Acts 1993, No. 509, § 1.

22-5-809. Leases and permits — Monthly statements — Payment of severance tax.

(a)(1) Every person obtaining a lease or permit under this section and §§ 22-5-801 — 22-5-808 and 22-5-810 — 22-5-813 shall keep an accurate record and account of all sand, gravel, oil, natural gas, casinghead gas, coal and other minerals taken, and all timber severed from the land covered by the lease or permit, and shall file with the Revenue Division of the Department of Finance and Administration monthly an itemized verified statement of the total conventional weight or volume of any and all minerals and timber taken under the lease or permit during the preceding month. These reports shall be made on forms prescribed by the division.

(2) Every person obtaining a lease or permit under this section and §§ 22-5-801 — 22-5-808 and 22-5-810 — 22-5-813 shall keep an accurate record and account of all sand, gravel, oil, natural gas, casinghead gas, coal and other minerals taken, and all timber severed from the land covered by the lease or permit, and shall file with the office of the Commissioner of State Lands monthly an itemized verified statement of the total number of tons of sand and gravel, barrels of oil, thousands of cubic feet of natural gas and casinghead gas, tons of coal, and the conventional weight or volume of any and all other minerals and timber taken under the lease or permit, during the preceding month. These reports shall be made on forms prescribed by the Commissioner of State Lands.

(b)(1) At the time of filing the reports, the lessee or permittee shall pay the severance tax to the Department of Finance and Administration in the same manner and at the same rate as all other severance taxes collected by the division.

(2) The lessee or permittee shall also pay monthly to the office of the Commissioner of State Lands royalties on the amount of actual consideration for the sand, gravel, minerals, or timber taken or severed from the state-owned lands under the conditions of the lease or permit issued by the Commissioner of State Lands.

(3) The Commissioner of State Lands shall further be authorized to require the posting of a corporate surety bond by any lessee or permittee to guarantee the payment of the taxes, royalties, and consideration.

(c)(1) Except for application and bid fees, all funds received by the office of the Commissioner of State Lands as fees, compensation, or royalties for leases or permits issued for the taking of any sand, gravel, minerals, or timber for lands owned or held in the name of a state agency or institution shall be special revenues and shall be deposited in the State Treasury and credited to the fund or account from which the agency or institution receives its support.

(2) Except for application and bid fees, all funds received by the Commissioner of State Lands for leases or permits for the taking of any sand, gravel, minerals, or timber from all other state-owned lands shall be deposited in the State Treasury as general revenues.

(3) All funds received by the Arkansas State Game and Fish Commission as fees, compensation, or royalties, including any application or bid fees, for leases or permits issued for the taking of any minerals for lands held in the name of the commission shall be special revenues and shall be deposited in the State Treasury and credited to the Game Protection Fund for the use of the commission.

History. Acts 1975, No. 524, § 5; 1981, No. 684, § 4; A.S.A. 1947, § 10-1018; Acts 1991, No. 537, § 3; 1993, No. 509, § 1.

22-5-810. Leases and permits — Liability — Transferability — Renewal.

(a) Each person, firm, company, corporation, association, or other business entity holding a lease or permit for the taking or production of any sand, gravel, timber, minerals, or other natural resources shall be absolutely liable for all severance taxes, royalties, and actual consideration for all the sand, gravel, or minerals produced or timber severed under the lease or permit regardless of whether the lessee or permittee is actually producing or severing the minerals or timber from the land.

(b)(1) All leases issued under the authority of this section and §§ 22-5-801 — 22-5-809 and 22-5-811 — 22-5-813 shall be transferable only with the approval of the Commissioner of State Lands.

(2) Any lease transferred in violation of subdivision (b)(1) of this section shall be subject to cancellation by the Commissioner of State Lands.

(3) All permits issued under the authority of this section and §§ 22-5-801 — 22-5-809 and 22-5-811 — 22-5-813 shall not be transferable.

(c) Upon the expiration of any lease or permit issued under the authority of this section and §§ 22-5-801 — 22-5-809 and 22-5-811 — 22-5-813, the lease or permit shall not be renewed or reissued.

History. Acts 1975, No. 524, § 7; 1981, No. 684, § 5; A.S.A. 1947, § 10-1020; Acts 1993, No. 509, § 1.

22-5-811. Leases and permits — Existing ones to continue.

Any person, firm, company, corporation, state agency, or other business entity holding a lease or permit on March 21, 1975, for the taking or production of any sand, gravel, minerals, or timber from state-owned lands shall be permitted to continue to take or produce sand, gravel, minerals, or timber from state-owned lands in accordance with such existing lease or permit.

History. Acts 1975, No. 524, § 8; 1981, No. 684, § 6; A.S.A. 1947, § 10-1021.

22-5-812. Leases and permits — Rules and regulations.

(a) The Commissioner of State Lands shall promulgate any rules and regulations which may be deemed necessary to carry out the provisions of this section and §§ 22-5-801 — 22-5-811 and 22-5-813.

(b) The Commissioner of State Lands shall include in the rules and regulations all grounds and conditions for the revocation or termination of any lease or permit issued under this section and §§ 22-5-801 — 22-5-811 and 22-5-813 and shall provide for reasonable notice to the lessee or permittee of an opportunity to be heard prior to terminating or revoking any lease or permit.

(c) The Arkansas State Game and Fish Commission shall promulgate rules and regulations necessary to lease mineral rights and to issue permits to produce and sever minerals on commission lands in conformity with the requirements, procedures, standards, and methods as provided in this section, §§ 22-5-801 — 22-5-811, and 22-5-813.

History. Acts 1975, No. 524, § 10; 1023; Acts 1991, No. 537, § 4; 1993, No. 1981, No. 684, § 7; A.S.A. 1947, § 10- 509, § 2.

22-5-813. Leases and permits — Compliance with this section and §§ 22-5-801 — 22-5-812.

The office of the Commissioner of State Lands may conduct a continuing check of the operations by lessees or permittees to assure

that each lessee or permittee is meeting all the requirements and complying with the conditions of the lease or permit and the provisions of this section and §§ 22-5-801 — 22-5-812.

History. Acts 1975, No. 524, § 6; A.S.A. 1947, § 10-1019; Acts 1993, No. 509, § 2.

22-5-814. Removal of sand or gravel from navigable waters.

(a) Sand and gravel may be removed from the beds or bars of any navigable river or lake by the Arkansas State Highway and Transportation Department, any county or road district, or any federal agency to be used for road building or maintenance, without paying the State of Arkansas any amount whatsoever.

(b) All persons, firms, or corporations taking or removing sand or gravel from the beds or bars of any navigable river or lake within the State of Arkansas, and selling the sand or gravel for commercial gain to the department, to any county or road district, or to any federal agency for the purpose of road construction or maintenance, and all highway contractors who remove sand or gravel from the beds or bars of any navigable river or lake within the State of Arkansas for the purpose of road building or maintenance, shall be required to pay to the State of Arkansas the customary royalties as provided by law.

(c) Any person, firm, or corporation taking or removing sand or gravel from the beds or bars of any navigable river or lake within the State of Arkansas, to be used in road building, shall keep a detailed account of all gravel or sand so removed.

(d) A copy of the account shall be filed with the Commissioner of State Lands, a copy with the county judge of the county where the sand or gravel is taken and removed, and a copy shall be retained by the person removing the sand or gravel.

History. Acts 1919 (2nd Ex. Sess.), No. 424, § 1; A.S.A. 1947, 262, §§ 1, 2, p. 4255; C. & M. Dig., §§ 10-1005, 10-1006; Acts 1993, No. 509, §§ 6793, 6794; Pope's Dig., §§ 8736, 8737; § 2.

22-5-815. Mineral rights in lands covered by artificially created navigable waters.

(a) The State of Arkansas shall not acquire title to the oil, gas, and other minerals in and under lands covered by navigable waters artificially created by agencies of the United States or the State of Arkansas in any instance where the underlying minerals are not purchased or condemned and compensation paid therefor.

(b) The private ownership of the oil, gas, and other minerals in and under lands covered by artificially created navigable waters as established by this section shall be subservient to, and the exercise of rights of extraction and removal thereof shall not be permitted to interfere with or impair, the rights of public navigation, transportation, fishing, and recreation in and upon such navigable waters.

(c) No affirmative action shall be required by the mineral owner or the State of Arkansas to enable the mineral owner to retain ownership of the minerals in and under the artificially inundated lands.

(d)(1) If the mineral owner desires record proof of his or her continued ownership of the minerals, he or she may file an application with the Commissioner of State Lands for a quitclaim deed covering the minerals in and under the inundated lands.

(2) If the inundated lands have been surveyed and platted by an agency of the United States or the State of Arkansas, the mineral owner may furnish a copy of the survey and plat to the Commissioner of State Lands.

(3) If the survey and plat sufficiently identify the land, no further survey shall be required.

(e)(1) In the alternative, the mineral owner may file a deposit of the estimated cost of a survey with his or her application, and the Commissioner of State Lands shall direct the county surveyor of the county in which the lands are located, or some other competent surveyor, to make an accurate survey of the lands and to plat them in reference to the survey of adjacent lands and file the survey and plat in the office of the Commissioner of State Lands.

(2) Upon the filing of the survey and plat, the Commissioner of State Lands shall pay for the cost of the survey out of the money deposited as provided in subdivision (e)(1) of this section.

(3) If the deposit is insufficient for that purpose, the Commissioner of State Lands may require an additional deposit.

(4) If any deposited funds remain after payment, they shall be refunded to the depositor.

(f) After the survey and plat of the agency of the United States or the State of Arkansas or the survey and plat of the surveyor selected by the Commissioner of State Lands are filed, the applicant shall file affidavits of at least two (2) competent persons having full personal knowledge of the facts, establishing that the applicant is the present owner of the minerals in and under the lands shown in the survey and that the lands have been inundated without payment of compensation for the minerals by an agency of the United States or the State of Arkansas.

(g) Upon receipt of the survey and affidavits, the Commissioner of State Lands may issue a quitclaim deed to the applicant upon the payment of a deed fee of one dollar (\$1.00). The quitclaim deed shall establish that the state has no claim in and makes no claim to the oil, gas, and other minerals in and under the lands described in the survey.

(h) The State of Arkansas quitclaims and relinquishes to the previous mineral owner and his or her successors and assigns all of the state's right, title, and interest to the oil, gas, and other minerals in and under lands covered prior to February 23, 1965, by artificially created navigable waters caused by an agency of the United States or the State of Arkansas and for which compensation has not been paid.

(i) If the previous mineral owner desires record proof of his or her continued ownership of the minerals, he or she may follow the proce-

dure outlined in this section and obtain a quitclaim deed from the Commissioner of State Lands.

History. Acts 1965, No. 112, §§ 1-4; A.S.A. 1947, §§ 10-1010 — 10-1013.

RESEARCH REFERENCES

Ark. L. Rev. Lex Aquae Arkansas, 27 Ark. L. Rev. 429.

UALR L.J. Survey of Arkansas Law: Property, 4 UALR L.J. 233.

Of Cows, Canoes, and Commerce: How the Concept of Navigability Provides an Answer If You Know Which Question to Ask, 25 UALR L.J. 175 (2002).

22-5-816. [Transferred.]

A.C.R.C. Notes. This section has been renumbered as § 22-5-406(b).

22-5-817. [Repealed.]

Publisher's Notes. This section, concerning leasing at Crater of Diamonds State Park, was repealed by Acts 1999,

No. 15, § 6. The section was derived from Acts 1987, No. 793, §§ 1-3; 1993, No. 1156, § 4.

22-5-818. Commercial mining at Crater of Diamonds State Park.

No commercial mining shall be permitted at the Crater of Diamonds State Park. Recreational mining by individuals shall continue to be permitted at the park.

History. Acts 1999, No. 15, § 1.

CHAPTER 6

SALE OR OTHER DISPOSITION OF STATE LANDS

SUBCHAPTER

1. GENERAL PROVISIONS.
 2. ISLANDS.
 3. SCHOOL LANDS.
 4. SWAMP AND OVERFLOWED LANDS.
 5. TAX-FORFEITED LANDS.
 6. LANDS OF STATE INSTITUTIONS.

RESEARCH REFERENCES

Am. Jur. 72 Am. Jur. 2d, States, § 67.

C.J.S. 73A C.J.S., Pub. Lands, § 178 et seq.

81A C.J.S., States, § 149.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 22-6-101. Record of land sales.
- 22-6-102. Correction of errors growing out of erroneous sales.
- 22-6-103. Issuance of replacement certificates of purchase.
- 22-6-104. Execution of deed on original or patent certificate.
- 22-6-105. Execution of deed on certificate of purchase.
- 22-6-106. Issuance of deed on proof of payment.
- 22-6-107. Deeds to school lands sold prior to 1881.
- 22-6-108. Seal of Commissioner of State Lands sufficient verification.
- 22-6-109. Cancellation of deed upon dishonor of check.
- 22-6-110. Confirmation of sales of lands

SECTION.

- 22-6-111. Price of swamp, internal improvement, seminary, saline, or school lands — Exemptions.
- 22-6-112. Preference to war veterans in sale of agricultural land.
- 22-6-113. State's retention of mineral interest — Exemption.
- 22-6-114. List of lands sold furnished to county clerks.
- 22-6-115. Prohibited acts of county officials affecting title.
- 22-6-116. Certificates by county collectors correcting or cancelling original certificates.
- 22-6-117. Report to Legislative Council.
- 22-6-118. Exemptions from § 22-6-117 requirement.

Cross References. Deed fee for state land commissioner, § 21-6-203.

Effective Dates. Acts 1859, No. 154, § 7: effective on passage.

Acts 1875 (Adj. Sess.), No. 53, § 4: effective on passage.

Acts 1881, No. 26, § 2: effective on passage.

Acts 1885, No. 10, § 7: effective on passage.

Acts 1887, No. 90, § 5: effective on passage.

Acts 1919, No. 226, § 3: Mar. 11, 1919. Emergency declared.

Acts 1919, No. 344, § 8: effective on passage. Emergency declared. Approved Mar. 22, 1919.

Acts 1941, No. 35, § 3: effective on passage.

Acts 1943, No. 206, § 5: Mar. 15, 1943. Emergency clause provided: "Because of the clouding of many titles to real estate throughout the state, resulting in long delays in sales and loans, an emergency is found and hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1945, No. 292, § 3: Mar. 20, 1945. Emergency clause provided: "It is found that thousands of Arkansas men and women in the armed forces are being

discharged and that many of them might desire to avail themselves of the opportunity to purchase state-owned tax forfeited lands for the purpose of establishing homes, therefore, an emergency is declared to exist and this act being for the immediate preservation of the public peace, health, and safety shall become effective from and after its passage and approval."

Acts 1959, No. 305, § 3: Mar. 26, 1959. Emergency clause provided: "It has been found and is hereby declared by the General Assembly that existing law does not adequately provide the retention in the state of the mineral rights when the state or any of its agencies dispose of state-owned land; that the failure to retain such rights will cause irreparable harm to the state and its agencies through the loss of funds which otherwise would be available for making sorely-needed improvements at the State Hospital and the state's other institutions; and that only by the provisions of this act, and the immediate effectiveness thereof, may the aforesaid conditions be alleviated. Therefore, an emergency is hereby declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force on and after the date of its passage and approval."

22-6-101. Record of land sales.

(a) In addition to the memorandum of sales or entry of lands to be made upon the maps or plats, the Commissioner of State Lands shall procure a well-bound book in which he or she shall enter each location or purchase of lands and in which he or she shall specify the tract sold, to whom sold, the date of sale, and the price and how paid.

(b) The Commissioner of State Lands shall always discriminate the class to which the lands sold belong.

(c) The Commissioner of State Lands shall make to the Auditor of State quarterly reports of the transactions of his or her office. These reports shall show the class of lands, the number of acres, the price per acre, the amount paid and the kind of funds so paid, together with a report of fees certified to the Treasurer of State by the Commissioner of State Lands.

History. Acts 1853, §§ 15, 20, p. 161; §§ 6583, 6588; Pope's Dig., §§ 8614, 8619; 1887, No. 90, § 4, p. 140; C. & M. Dig., A.S.A. 1947, §§ 10-506, 10-507, 10-531.

22-6-102. Correction of errors growing out of erroneous sales.

(a) The Commissioner of State Lands shall have the power to correct errors that exist or may exist arising from the erroneous sale of lands belonging or formerly belonging to the state.

(b) The Commissioner of State Lands shall have the power to correct all manifest errors in the description of lands sold, in the amounts of notes given for lands sold by the state, and also in cases where notes may have been given for the purchase of a greater number of acres than has been confirmed to the state.

(c) It shall be the duty of the Commissioner of State Lands to maintain a record of errors existing in the sales of swamp and overflowed lands.

(d) Certified extracts from the record shall be received as evidence in any court of this state.

(e) In all cases where lands have been erroneously confirmed to the state and sold by it, twice sold by commissioners, sold by them when the lands were unconfirmed or misdescribed, in whole or in part, or when the sales are in any way irregular, informal, or incomplete, the Commissioner of State Lands shall issue a certificate or take steps to perfect the entry or to enable the purchasers, their heirs, or assigns to have refunded to them any money which they may have paid on any entry that is void or voidable.

(f) In all cases where by any reason the State of Arkansas shall be unable to make title to any purchaser of state lands, it shall be lawful for the Commissioner of State Lands to issue a refunding certificate for the amount received from the purchase which shall have been paid into the State Treasury.

(g) The Auditor of State, upon examination of the certificate, if he or she finds that the certificate is properly issued and that the money has

been paid into the State Treasury, shall draw his or her warrant upon the Treasurer of State therefor.

(h) The Commissioner of State Lands, on production of proof satisfactory to him or her, may correct errors and put land in a situation to have deeds thereon made.

(i) The action of the Commissioner of State Lands shall be final unless set aside by judgment or decree of a court having competent jurisdiction thereof.

(j)(1) The Commissioner of State Lands may furnish a person with a statement of any amounts that may be due in order to perfect any entry or purchase to be paid directly into the State Treasury, or he or she may issue a warrant for any amount due, after issuing a refunding certificate.

(2) For such service, the Commissioner of State Lands shall be allowed such fees as allowed by law.

(k) Any action to correct errors on the part of the Commissioner of State Lands shall be legal and binding until overruled or set aside by the decision of a court having competent jurisdiction.

History. Acts 1854, § 3, p. 13; 1859, 8698-8703; A.S.A. 1947, §§ 10-508 — 10-514.
No. 154, §§ 1-5, 7, p. 182; C. & M. Dig., §§ 6764, 6766-6771; Pope's Dig., §§ 8696,

CASE NOTES

ANALYSIS

Equitable jurisdiction.

Evidence of title.

Repayment of money.

Sale.

Equitable Jurisdiction.

Equity has jurisdiction to confirm title since remedy prescribed by this section for a hearing before the commissioner is not exclusive. *Cutrell v. Hoover*, 194 Ark. 1085, 110 S.W.2d 19 (1937).

Evidence of Title.

Evidence of refunding certificate held sufficient to uphold validity of defendant's title. *Cox v. Thane*, 157 Ark. 389, 248 S.W. 270 (1923).

Repayment of Money.

Under Ark. Const., Art. 5, § 28, and Art. 16, § 12, money paid for lands forfeited to the state for taxes cannot be repaid on a refunding certificate of the Commissioner of State Lands without a specific appropri-

ation therefor. *Oliver v. Bolinger*, 146 Ark. 242, 225 S.W. 314 (1920).

Although this section provides that where land is erroneously sold, the Commissioner of State Lands shall issue a refunding certificate for the sum paid and the Auditor shall draw a warrant on the Treasurer therefor, the Auditor will not, in the absence of an appropriation by the General Assembly, be required by mandamus to draw the warrant. *Winn v. Humphrey*, 195 Ark. 131, 111 S.W.2d 468 (1938).

Sale.

Finding against a purchaser was proper where the sale of the property was conducted in accordance with the requirements of Arkansas law and no error existed that would have justified the cancellation of the limited-warranty deed under the provisions of this section; further, the purchaser was not a bona-fide purchaser. *Bill's Printing, Inc. v. Carder*, 82 Ark. App. 466, 120 S.W.3d 611 (2003).

22-6-103. Issuance of replacement certificates of purchase.

The Commissioner of State Lands shall issue certificates of purchase only in cases in which it shall appear by the records that no certificates have ever been issued and in cases where the affidavit of the applicant, or some person for him or her, shall be filed stating that the original certificate had not been assigned or that it has been lost or destroyed.

History. Acts 1854, § 2, p. 13; C. & M. Dig., § 6763; Pope's Dig., § 8695; A.S.A. 1947, § 10-520.

22-6-104. Execution of deed on original or patent certificate.

(a) The owner of any original or patent certificate for any seminary, saline, internal improvements, swamp and overflowed, real estate bank, or state bank lands, or the assignee or the parties in whom the legal title to the land exists, may present the certificate to the Commissioner of State Lands, who, if he or she finds that the sale of the land was made in conformity to law and that the land has been fully paid for, shall execute, under his or her hand and official seal, a deed conveying all rights, title, and interest of the state thereto.

(b) The seal of the Commissioner of State Lands shall be sufficient verification and authentication of the deed so made and shall entitle the deed to record, which shall be received as evidence in any court of this state.

(c) The original or patent certificates upon which deeds are made shall be filed in the Commissioner of State Lands' office, and the Commissioner of State Lands shall keep an abstract of the deeds so made, from which he or she may issue duplicates upon sufficient proof of the loss of original deeds.

(d) In all cases where sufficient proof is presented of the loss or destruction of any deeds made to any lands belonging to this state, by any officer authorized so to do, where evidence exists in the Commissioner of State Lands' office of the issuance of the former deeds, it shall be the duty of the Commissioner of State Lands to issue duplicates or make new deeds therefor, as the case may be, referring therein to the deeds previously issued.

(e) The duplicates or new deeds shall have the like force and effect as the original deeds.

History. Acts 1875 (Adj. Sess.), No. 53, §§ 8691, 8692; A.S.A. 1947, §§ 10-521, §§ 1, 2, p. 91; 1881, No. 26, § 1, p. 40; C. & M. Dig., §§ 6759, 6760; Pope's Dig., 10-522.

CASE NOTES

Unrecorded Deed.

A deed of the Commissioner of State Lands conveying land forfeited for taxes, authenticated by his official seal, is prima

facie evidence of title, although it has not been recorded. *Thornton v. Smith*, 88 Ark. 543, 115 S.W. 677 (1909).

22-6-105. Execution of deed on certificate of purchase.

(a) The owner of any certificate of purchase for any swamp and overflowed, seminary, saline, internal improvement, real estate bank, or state bank lands, or the assignee or the party in whom the legal title to the lands exist, may present the certificates and other evidences of the legal title to the lands to the Commissioner of State Lands. If the Commissioner of State Lands finds that the sale of the lands was in conformity to law, the lands have been fully paid for, and the evidences of assignment have been made in accordance with law, he or she shall execute, under his or her hand and official seal, a deed conveying all the right, title, and interest of the state in and to the lands.

(b) The deed of the state shall not be issued to any approved swamp and overflowed lands until after the issuance of the patent by the United States to the state for the lands.

History. Acts 1885, No. 10, § 3, p. 10; C. & M. Dig., § 6591; Pope's Dig., § 8622; A.S.A. 1947, § 10-524.

Publisher's Notes. Acts 1885, No. 10, § 7, provided that nothing in the act should be construed to repeal the act of

Dec. 15, 1875, which enabled settlers and preemptors on the swamp and overflowed lands to perfect their titles by entry or the act of Mar. 18, 1879, which authorized the sale of swamp lands in certain cases.

CASE NOTES

Cited: Thornton v. Smith, 88 Ark. 543, 115 S.W. 677 (1909).

22-6-106. Issuance of deed on proof of payment.

The Commissioner of State Lands is authorized and empowered to execute, under his or her hand and official seal, a deed to purchasers from the state of any seminary, saline, internal improvement, real estate bank, or state bank lands, upon the filing in his or her office of the receipts of the Treasurer of State, showing that the purchase money for the lands, together with the fee for the deed, has been fully paid to the Treasurer of State as required by law.

History. Acts 1885, No. 10, § 1, p. 10; C. & M. Dig., § 6589; Pope's Dig., § 8620; A.S.A. 1947, § 10-523.

Publisher's Notes. As to construction of Acts 1885, No. 10, see Publisher's Notes to § 22-6-105.

22-6-107. Deeds to school lands sold prior to 1881.

(a) The Commissioner of State Lands is authorized and empowered to execute, under his or her hand and official seal, a deed to purchasers or their assigns or legal representatives of sixteenth section or school lands, upon presentation to the Commissioner of State Lands of proper evidence of full payment for the lands, in all cases where the sale of the land occurred prior to the passage of "An act to provide for the sale of the sixteenth section in this State", approved March 22, 1881.

(b) The certificates and evidences of assignment mentioned in subsection (a) of this section, upon which deeds are so made, shall be filed in the Commissioner of State Lands' office. He or she shall keep a record of the deeds so made, from which he or she may issue duplicates upon sufficient proof of loss of, or errors in, the original deeds.

(c) In all cases where sufficient proof is presented of the loss, destruction, or erroneous issue of any deeds made to any lands belonging to the state by any officer authorized so to do, when evidence exists in the Commissioner of State Lands' office of the proper issuance of the former deeds, it shall be the duty of the Commissioner of State Lands to issue duplicates or make new deeds, as the case may be, referring therein to the deeds previously issued.

(d) The duplicates or new deeds shall have the like force and effect as the original deeds.

History. Acts 1885, No. 10, §§ 2, 5, p. 10; C. & M. Dig., §§ 6590, 6593; Pope's Dig., §§ 8621, 8627; A.S.A. 1947, §§ 10-525, 10-526.

For prior laws relating to the execution of deeds to school lands, see Acts 1869 (Adj. Sess.), No. 93, §§ 10, 11, p. 190, and Acts 1875 (Adj. Sess.), No. 80, p. 155.

Publisher's Notes. As to construction of Acts 1885, No. 10, see Publisher's Notes to § 22-6-105.

CASE NOTES

Duplicate Deeds.

The duplicate deed is not a present grant, but is a substitute for, and takes the place of, the original deed. *Thornton v. Smith*, 88 Ark. 543, 115 S.W. 677 (1909).

This section contemplates that the

Commissioner of State Lands shall issue a duplicate deed of lands forfeited for taxes upon proper proof of loss of the original deed. *Thornton v. Smith*, 88 Ark. 543, 115 S.W. 677 (1909).

22-6-108. Seal of Commissioner of State Lands sufficient verification.

The seal of the Commissioner of State Lands shall be sufficient verification and authentication of the deed made by him or her for any class of lands mentioned in this act, and the deed shall be received as evidence of the legal title to the lands in any court in this state.

History. Acts 1885, No. 10, § 6, p. 10; C. & M. Dig., § 6594; Pope's Dig., § 8628; A.S.A. 1947, § 10-527.

of Acts 1885, No. 10, see Publisher's Notes to § 22-6-105.

Publisher's Notes. As to construction

Meaning of "this act". Acts 1885, No. 10, codified as §§ 22-6-105 — 22-6-108.

CASE NOTES

Unrecorded Deed.

A deed of the Commissioner of State Lands conveying lands forfeited for taxes, authenticated by his official seal, is prima

facie evidence of title, although it has not been recorded. *Thornton v. Smith*, 88 Ark. 543, 115 S.W. 677 (1909).

22-6-109. Cancellation of deed upon dishonor of check.

(a) The Commissioner of State Lands is empowered and authorized to cancel, set aside, and hold for naught any redemption or sale deed issued by him or her for any state-owned land in any instance where a personal check tendered to and accepted by him or her in payment of the redemption or purchase price thereof is not paid upon presentation to the bank upon which it is drawn.

(b) Upon failure of payment, the Commissioner of State Lands may issue a cancellation deed cancelling and setting aside the redemption or sale deed and shall file the cancellation deed for record in the county in which the lands are located and pay the expense incident thereto from the maintenance fund of the office of the Commissioner of State Lands.

History. Acts 1941, No. 35, §§ 1, 2;
A.S.A. 1947, §§ 10-504, 10-505.

22-6-110. Confirmation of sales of lands paid for with levee bonds.

(a) All sales of lands formerly owned by the State of Arkansas conducted pursuant to the decrees of the Pulaski County Chancery Court in favor of the State of Arkansas, condemning the lands for sale to pay the unpaid purchase price thereof, which sales were held and conducted by the commissioner of the court in substantial conformity to the decrees, were reported to and were approved and confirmed by the court, and were made for a price payable in Arkansas levee bonds to May 1, 1878, are ratified and confirmed and made valid as if the lands had been paid for in valid funds.

(b) When the owner and occupant of any of the lands shall present to the Commissioner of State Lands a duly certified copy of the proceedings of the court affecting the lands claimed by him or her and showing that the land was sold prior to May 1, 1878, and paid for in Arkansas levee bonds and that the sale was approved and confirmed by the court, and when the owner shall file a petition with the Commissioner of State Lands setting forth the evidence of his or her title, showing title derived by him or her from the purchaser at the sale so held under decree of the court prior to May 1, 1878, and showing that the claimant and those under whom he or she claims title have continuously paid taxes on the lands for at least seven (7) years immediately preceding the filing of the petition, it shall be the duty of the Commissioner of State Lands to execute to the record owner a deed in the name of the State of Arkansas, quieting all the right, title, and claim of the State of Arkansas in the land claimed and held by each owner.

History. Acts 1919, No. 226, §§ 1, 2; C. & M. Dig., § 6785; Pope's Dig., § 8710; A.S.A. 1947, §§ 10-528, 10-529.

A.C.R.C. Notes. Ark. Const., Amend. 80, adopted by voter referendum and effective July 1, 2001, abolished chancery

courts and established circuit courts as the trial courts of original jurisdiction. The jurisdiction of the circuit courts now includes "all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Court..."

CASE NOTES

ANALYSIS

In general.
Quieting title.
State's lien.

In General.

This section is valid and vests title to land where payment was void because of payment in levee bonds. *Matthews v. Williamson*, 143 Ark. 281, 220 S.W. 58 (1920).

Quieting Title.

Where a payment of the purchase money of the state's land was void because

made in levee bonds, the purchaser's grantee was entitled to have her title quieted. *Matthews v. Williamson*, 143 Ark. 281, 220 S.W. 58 (1920).

State's Lien.

Even though a payment for state land in levee bonds was not a valid payment, this fact did not preclude the vesting of title in the purchaser, the state having a lien on the land for the purchase money. *Matthews v. Williamson*, 143 Ark. 281, 220 S.W. 58 (1920).

22-6-111. Price of swamp, internal improvement, seminary, saline, or school lands — Exemptions.

(a)(1) No swamp, internal improvement, seminary, or saline lands shall be sold for less than two dollars and fifty cents (\$2.50) per acre, and no state school land shall be sold for less than two dollars and fifty cents (\$2.50) per acre nor for less than the market value ascertained by appraisalment.

(2) When any lands or interest therein may be recovered by the state by litigation, the lands or interest shall be ordered sold by the court as in sales of land upon decree in equity.

(3) After paying expenses, the balance of the purchase money shall be deposited in the State Treasury, as provided in §§ 6-20-202 and 6-20-203.

(b) Nothing in this section shall be construed to prevent the donation of state lands as provided by law.

(c) Nothing in this section or §§ 22-6-301 — 22-6-304 shall prevent the Commissioner of State Lands from accepting outstanding refunding certificates issued by the state for lands previously sold in payment for state lands.

(d) Nothing in this section or §§ 22-6-301 — 22-6-304 shall affect the sale of any state lands where written application was filed with the Commissioner of State Lands prior to February 1, 1919.

(e) Nothing in this section or §§ 22-6-301 — 22-6-304 shall affect the law in regard to the sale by the state of tax-forfeited lands.

History. Acts 1919, No. 344, § 1; C. & M. Dig., § 9009; Acts 1921, No. 350, § 1; Pope's Dig., § 8626; A.S.A. 1947, § 10-502.

Publisher's Notes. Acts 1919, No.

344, § 7, provided that nothing in that act would be construed to prevent the redemption of lands and town and city lots under §§ 26-37-310 and 26-37-311 or subsequent laws.

CASE NOTES

Applicability.

This section has no application to islands formed in navigable rivers. *Wilson v. Guthrie*, 155 Ark. 315, 244 S.W. 338 (1922).

This section relates to "state school land" and not to acquisition and sale of land by a "school district." *Jewel v. Shiloh Cem. Ass'n*, 224 Ark. 324, 273 S.W.2d 19 (1954).

22-6-112. Preference to war veterans in sale of agricultural land.

In the disposition of state-owned tracts of lands suitable for agriculture, the Commissioner of State Lands shall give first preference, where they are qualified as farmers, to war veterans who have been bona fide citizens of this state for five (5) years or more, who have been in active military service in time of war for ninety (90) days or more, and who have been discharged or relieved therefrom under conditions other than dishonorable.

History. Acts 1945, No. 292, § 1;
A.S.A. 1947, § 10-501.

22-6-113. State's retention of mineral interest — Exemption.

(a) Irrespective of any other law on the subject, in any conveyance of title to lands owned by the State of Arkansas, except as provided in subsection (b) of this section, the state shall retain ownership of not less than one-half ($\frac{1}{2}$) interest in and to all the oil, gas, and other minerals therein or thereunder.

(b) The provisions of this section shall not affect the provisions of law governing the sale of tax-forfeited lands by the State of Arkansas.

History. Acts 1959, No. 305, §§ 1, 2;
A.S.A. 1947, §§ 10-532, 10-533.

22-6-114. List of lands sold furnished to county clerks.

(a) The Commissioner of State Lands shall, each year at least thirty (30) days prior to the time fixed by law for the annual assessment of personal property, make out from the records of his or her office complete and accurate lists by counties and by proper descriptions of all lands and town lots which may have been sold or otherwise disposed of by the state and properly subject to taxation; he or she shall forward the lists, when so made, to the clerks of the respective counties wherein the lands lie.

(b) It is the duty of the clerks, immediately upon the receipt of the lists, to enter the lists upon the tax books of the county as lands subject to taxation, and the assessors shall assess the lands for taxation and the lands shall be taxed beginning with the year certified by the Commissioner of State Lands as the year in which the lands were disposed of by the state.

History. Acts 1887, No. 90, § 1, p. 140; C. & M. Dig., §§ 6587, 9925; Pope's Dig., §§ 8618, 13692; A.S.A. 1947, § 10-530.

CASE NOTES

Untimely Certification.

Forfeiture and sale for taxes was not valid where Commissioner did not certify

until too late for the assessor to assess the tax. *Johnson v. Buckner*, 210 Ark. 753, 197 S.W.2d 465 (1946).

22-6-115. Prohibited acts of county officials affecting title.

(a) No county clerk, county assessor, sheriff, or other county official shall file or prepare and issue any type of deed, mortgage, lease, or other legal document, nor shall he or she extend and assess any taxes on state or political subdivision lands for any type of taxes, nor shall he or she include any such lands on any delinquent list, without first notifying the state or the department owning the lands by registered letter, return receipt requested, sixty (60) days prior to taking such action, setting forth the proposed action to be taken and including a complete legal description of the lands.

(b) Any action taken without complying with the requirements of this section shall be declared null, void, and invalid, as against the state or political subdivision thereof, in any court having jurisdiction of the cause.

History. Acts 1971, No. 727, §§ 1, 3; A.S.A. 1947, §§ 10-534, 10-535.

22-6-116. Certificates by county collectors correcting or cancelling original certificates.

(a) When any county collector shall determine that the original certification to the Commissioner of State Lands of any lands, or town or city lots, should be cancelled, corrected, or in any way changed, said official shall issue a certificate to the Commissioner of State Lands. Such certificate shall contain the legal description of the property, state the change, and state the appropriate manner in which to make such change.

(b) Upon receipt of any cancellation or correction certificate, the Commissioner of State Lands shall determine whether the certificate offers sufficient evidence to warrant cancellation or correction of the certification of any real property. If the Commissioner of State Lands determines that cancellation or correction is warranted, the Commissioner of State Lands shall approve the cancellation or correction certificate, amend the records of the Commissioner of State Lands, forward the certificate to the county collector, and the certificate shall be filed with the recorder of the county and properly recorded in the deed records. A recorded copy of such certificate shall be transmitted to any other county officials upon whose records the parcel is recorded.

(c) Whenever a cancellation or correction certificate has been recorded in the records of the Commissioner of State Lands, the Commissioner of State Lands shall issue a cancellation or correction deed on property which has been redeemed, sold, or otherwise disposed of as tax-forfeited land. The Commissioner of State Lands shall forward the deed to be filed in the county where the property is located.

(d) No recording fee shall be charged by or against the recorder on any cancellation or correction certificate or on any cancellation or correction deed issued by the Commissioner of State Lands.

(e) When any county assessor shall determine that the information on tax-delinquent parcels is erroneous, whether by legal description, name of record owner, double assessment, or other cause, the assessor shall inform the county collector of such change, and the county collector shall forward a cancellation or correction certificate to the Commissioner of State Lands as specified in subsection (a) of this section.

(f) Should information contained in the records of the Commissioner of State Lands be found to be erroneous, whether by legal description, name of record owner, or other cause, the Commissioner of State Lands may, at his or her discretion, waive all or part of penalties and interests applied thereon as a result of the inaccuracies.

History. Acts 1943, No. 206, §§ 1-3;
A.S.A. 1947, §§ 10-517 — 10-519; Acts
1989, No. 538, § 1; 1991, No. 807, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Tax Forfeiture Problems
in the Examination of Abstracts, 12 Ark.
L. Rev. 333.

22-6-117. Report to Legislative Council.

(a) For purposes of this section and § 22-6-118, "quarter" means:

- (1) January 1 through March 31 of each year;
- (2) April 1 through June 30 of each year;
- (3) July 1 through September 30 of each year; and
- (4) October 1 through December 31 of each year.

(b) When any agency of this state or agent of this state conveys any interest in real property or natural resources owned by this state, the agent or agency shall report the conveyance to the Legislative Council no later than thirty (30) days after the end of the quarter during which the conveyance occurred.

(c) The report of conveyance shall include:

- (1) The parties to the conveyance;
- (2) The date of the conveyance;
- (3) The location of the property conveyed;
- (4) The compensation received by the state for the conveyance;

- (5) Changes in the lease agreement if the conveyance is a lease; and
- (6) Any other information requested by the Legislative Council.

History. Acts 1997, No. 1315, § 1.

22-6-118. Exemptions from § 22-6-117 requirement.

The provisions of this section and § 22-6-117 shall not apply to the following:

- (1) Conveyance by the state of tax-delinquent property;
- (2) Leases of state property of a duration of one (1) year or less;
- (3) Leases of state property to state employees for housing;
- (4) Conveyances of state property by one state agency to another state agency; and
- (5) Easements or any lesser estate in land granted by any state agency.

History. Acts 1997, No. 1315, § 2.

SUBCHAPTER 2 — ISLANDS

SECTION.
22-6-201. Purpose.
22-6-202. Property of state.

SECTION.
22-6-203. Disposition.
22-6-204. Confirmation of prior sales.

Publisher’s Notes. The Office of Planning, created by Acts 1971, No. 38, § 4, which is referred to in this subchapter, was terminated on June 30, 1979, by Acts 1977, No. 100, § 3.

Effective Dates. Acts 1933, No. 25, § 4: approved Feb. 9, 1933. Emergency clause provided: “Because of the fact that considerable confusion exists as to the rights of the state which may be lost or destroyed unless immediately asserted, and this act being necessary for the immediate promotion of the public health, peace and safety, an emergency is hereby declared, and this act shall take effect and be in force immediately after its passage.”

Acts 1959, No. 452, § 5: Mar. 30, 1959. Emergency clause provided: “It has been

found and is declared by the General Assembly of the State of Arkansas that the failure of existing law to require competitive bidding for the class of lands contemplated herein has resulted in a serious loss of revenue to the state and is discriminatory as between buyers of various classes of state lands; that there is urgent need to secure additional revenue and prevent further discrimination as aforesaid; and that enactment of this bill will provide the needed remedy. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from the date of its approval.”

CASE NOTES

ANALYSIS

Pleading.
Selection of law.
Specific performance.
Standing.

Pleading.
In suit to cancel deed to island land, complaint alleging failure to comply with former law that provided that lands should not be sold unless accessible to agriculture or above the high water mark

was held to state a cause of action. *State v. Guthrie*, 203 Ark. 60, 156 S.W.2d 210 (1941) (decision under prior law).

Complaint in suit to cancel State Land Commissioner's deed to island land should contain an offer to restore to the purchaser amount of purchase price and taxes paid on such land. *State v. Guthrie*, 203 Ark. 60, 156 S.W.2d 210 (1941) (decision under prior law).

Selection of Law.

Though plaintiffs claimed that an island in a navigable stream was an accretion to their lands situated on the mainland, there was no inconsistency in their attempting to acquire title under law that established procedure for making claims to islands. *Underdown v. Desha*, 142 Ark. 258, 219 S.W. 19 (1920) (decision under prior law).

Specific Performance.

Suit to compel Commissioner to make and deliver deed to lands which plaintiff had applied to purchase is not a suit for specific performance. *Reed v. Wilson*, 163 Ark. 520, 260 S.W. 438 (1924) (decision under prior law).

Standing.

Squatter on an island in the Mississippi River was without right to question title of the State of Arkansas or her grantee because he was without vestige of title in himself from any source. *Conway v. Shuck*, 203 Ark. 559, 157 S.W.2d 777 (1942) (decision under prior law).

Cited: *United States Gypsum Co. v. Uhlhorn*, 232 F. Supp. 994 (E.D. Ark. 1964).

RESEARCH REFERENCES

Am. Jur. 78 Am. Jur. 2d, Waters, § 338 et seq.

Ark. L. Rev. *Lex Aquae Arkansas*, 27 Ark. L. Rev. 429.

C.J.S. 65 C.J.S., Navig. Waters, § 126 et seq.

22-6-201. Purpose.

(a) It is the primary purpose and intent of this subchapter that when islands are formed in navigable waters of this state, title to the islands should be retained in the state if the island is appropriate for use by any state agency or may become appropriate for any use by the state and that the islands should be sold by the state only when it is determined that they have no present or future use to the state.

(b) It is not the purpose of this subchapter to require any state agency to accept the responsibility and duty for the operation, management, or development of any island but only that appropriate state agencies, as determined by the Commissioner of State Lands, shall have an opportunity to assume control over the islands.

(c) It is also the intent of this subchapter that when any state agency accepts the duties and responsibility of operating, managing, or developing any island, the agency shall have the authority to permit and regulate activities upon the lands, including the cutting of timber. The agency may use or permit the use of the lands for such purposes as it shall deem appropriate.

(d) It is further the intent of this subchapter to establish the policy that all submerged lands following the navigable waterways of this state shall remain in the state domain. "Submerged lands" shall be those lands found at and below the line of ordinary highwater and shall

include, but not be limited to, the beds, channels, chutes, and adjoining areas of rivers, lakes, and streams.

History. Acts 1971, No. 148, § 4; A.S.A. 1947, § 10-613; Acts 1991, No. 807, § 2.

22-6-202. Property of state.

(a) All islands formed or which may form in the navigable waters of this state are declared to be the property of the state except as provided in § 22-6-204 and subject to sale and disposition in the manner and form provided in this subchapter.

(b) The Commissioner of State Lands shall have full power and authority to lease or grant submerged lands, and the Commissioner of State Lands shall promulgate rules and regulations as may be necessary to effectively carry out the provisions of this section, and, upon adoption, such rules and regulations shall have the full force and effect of law.

History. Acts 1959, No. 452, §§ 1, 4; A.S.A. 1947, §§ 10-601, 10-603; Acts 1991, No. 807, § 2.

CASE NOTES

ANALYSIS

Construction.

Applicability.

Determination by commissioner.

Power to sell.

Special acts.

Submerged land.

Construction.

This section construed to apply to islands formed in navigable streams not within boundary lines of former owners so as not to repeal § 22-5-403 by implication. *Ward v. Harwood*, 239 Ark. 71, 387 S.W.2d 318 (1965).

Applicability.

Sale of islands in navigable rivers was governed by former similar provision. *Wilson v. Guthrie*, 155 Ark. 315, 244 S.W. 338 (1922) (decision under prior law).

This section had only prospective application and did not affect application for an island filed under prior law. *United States Gypsum Co. v. Uhlhorn*, 232 F. Supp. 994 (E.D. Ark. 1964), *aff'd*, 366 F.2d 211 (8th Cir. 1996), *cert. denied*, 385 U.S. 1026, 87 S. Ct. 753, 17 L. Ed. 2d 674 (1967).

Determination by Commissioner.

The Commissioner's decision that the land which petitioner sought to buy was not an island could not be corrected or controlled by mandamus. *Lewis v. Owen*, 146 Ark. 469, 225 S.W. 648 (1920) (decision under prior law).

Evidence supported Commissioner's determination that land was an island belonging to state and was subject to sale and conveyance by Commissioner of State lands. *Conway v. Shuck*, 203 Ark. 559, 157 S.W.2d 777 (1942) (decision under prior law).

Power to Sell.

If evidence showed that island land at the time deeded was not accessible to agriculture or was below the mean high water mark of the river, then state had no power to sell and deed by Commissioner of State Lands would be void. *State v. Guthrie*, 203 Ark. 60, 156 S.W.2d 210 (1941) (decision under prior law).

Special Acts.

While the Constitution provides that a special law cannot be enacted where a general law can be made applicable, the necessity for a special law is within the

discretion of the legislature; consequently, Special Act 1919, No. 85, authorizing conveyance of an island to a named individual, could not be attacked as an attempt to supplant former general act governing disposition of islands. *Ferguson v. Hudson*, 143 Ark. 187, 220 S.W. 306 (1920) (decision under prior law).

Where plaintiff purchased from riparian owners land claimed to be accretions, defendants who did not trace their title from any riparian owner could not assail special act as being an attempt of the state to dispose of accretion lands, title to which was necessarily in riparian owners. *Fer-*

guson v. Hudson, 143 Ark. 187, 220 S.W. 306 (1920) (decision under prior law).

Submerged Land.

Even if the land had caved into the river, gift of land from state to levee district covered such title as would ripen into being when the land emerged from its subsidence in the river. *Smith v. Turner*, 202 Ark. 253, 150 S.W.2d 29 (1941) (decision under prior law).

Cited: *United States Gypsum Co. v. Greif Bros. Cooperage Corp.*, 389 F.2d 252 (8th Cir. 1968).

22-6-203. Disposition.

(a) The Commissioner of State Lands shall receive requests for conveyance of title to an island previously formed in the navigable waters of this state and not previously disposed of in the manner provided by law.

(b)(1) The Commissioner of State Lands shall inquire into the terrain and other physical attributes of the island for the purpose of determining which state agency, if any, would be most appropriate for operating, managing, and developing the island.

(2) Upon making the determination, the Commissioner of State Lands shall notify the agency which it finds to be most appropriate to operate and manage the island and shall determine whether that agency is willing to accept the authority and responsibility for operating and managing the island.

(3) If that agency is willing to accept the authority and responsibility of operating and managing the island, the Commissioner of State Lands shall hold the state title to the island, and the authority and duty to operate and manage the island shall be vested in the agency.

(4) If the agency so notified does not desire to accept the responsibility and duty to operate and manage the island, it shall notify the Commissioner of State Lands who shall give the state agency which it deems next most appropriate the option of accepting the authority and responsibility of operating and managing the island.

(c)(1) When an agency agrees to accept the authority and responsibility of operating and managing an island, the agency shall cause the island to be accurately surveyed, compile field notes, and plat the lands in reference to the adjacent lands by the extension of township, range, and section lines, and the agency shall pay the cost of the survey.

(2) Upon completion of the survey, a copy shall be filed with the Commissioner of State Lands. Upon payment of one dollar (\$1.00) consideration to the Commissioner of State Lands by the agency desiring to accept the authority and responsibility of operating and managing the island, the authority and responsibility shall vest with the agency, and title shall be in the name of the State of Arkansas and held by the Commissioner of State Lands.

(d) If the Commissioner of State Lands finds that an island is not appropriate for operation, management, or use by any appropriate state agency and if no state agency is desirous of accepting the responsibility and duty of managing and operating the island, the Commissioner of State Lands may, at his or her discretion and if the Commissioner of State Lands determines that the best interest of the state is being served, retain title to the island in the name of the state, or, alternatively, the Commissioner of State Lands may sell the island in a manner prescribed by subsection (e) of this section.

(e)(1) Whenever the Commissioner of State Lands finds that any island formed in the navigable waters of this state is not appropriate for use by any state agency and if no state agency is desirous of assuming the responsibility and duty of operating and managing the island, the Commissioner of State Lands may accept applications for purchase of the island.

(2) When the application is filed with the Commissioner of State Lands, the Commissioner of State Lands shall cause the island to be accurately surveyed, compile field notes, and plat the lands in reference to the adjacent lands by the extension of township, range, and section lines.

(3) Thereafter, the lands shall be appraised and treated in all respects and sold and conveyed by the state in a public manner and as prescribed by the Commissioner of State Lands.

(4) The cost of the survey of any island made as required by this section shall be added to the purchase price of the island.

History. Acts 1971, No. 148, §§ 1-3; A.S.A. 1947, §§ 10-610 — 10-612; Acts 1991, No. 807, § 2.

Publisher's Notes. Acts 1971, No. 148, § 6, provided in part that the act did not repeal § 22-5-403.

CASE NOTES

ANALYSIS

After-acquired title.

Authority of commissioner.

Evidence of title.

Payment in deed bonds.

Validity of deed.

Vested right.

After-Acquired Title.

One who had applied for the purchase of island lands prior to the commencement of litigation in which title to the lands could have been quieted could not assert title to the lands as an after-acquired title upon receiving the state's deed for the lands subsequent to the litigation. *United States Gypsum Co. v. Greif Bros. Cooperative Corp.*, 389 F.2d 252 (8th Cir. 1968) (decision under prior law).

Authority of Commissioner.

Commissioner of State Lands who conveyed island land in navigable river for the state was acting as its agent and was required to comply with every provision of former similar provision. *State v. Guthrie*, 203 Ark. 60, 156 S.W.2d 210 (1941) (decision under prior law).

Evidence of Title.

In suit by purchaser of an island from the Commissioner to enjoin the adjacent riparian landowner from interfering with land, evidence held insufficient to establish adjacent riparian landowner's right to island either by accretion to his land or on ground that island formed within his original boundary. *Wunderlich v. Cates*, 213 Ark. 695, 212 S.W.2d 556 (1948) (decision under prior law).

Payment in Levee Bonds.

Even though a payment for state lands in levee bonds was not a valid payment, the title still vested in the purchaser, the state having a lien on the land for the purchase money. *Matthews v. Williamson*, 143 Ark. 281, 220 S.W. 58 (1920) (decision under prior law).

Though a payment of the purchase money of the state's lands was void because made in levee bonds, the purchaser's grantee was entitled to have her title quieted. *Matthews v. Williamson*, 143 Ark. 281, 220 S.W. 58 (1920) (decision under prior law).

Validity of Deed.

Where the Commissioner finds that the island did not form in a navigable stream by accretion and sells the land, the deed is prima facie good until fraud is shown. *Wunderlich v. Cates*, 213 Ark. 695, 212 S.W.2d 556 (1948) (decision under prior law).

In action to quiet title to island, party standing in the position of a third person could not make a collateral attack on deed from state to an individual. *United States Gypsum Co. v. Uhlhorn*, 232 F. Supp. 994 (E.D. Ark. 1964), aff'd, 366 F.2d 211 (8th Cir. 1996), cert. denied, 385 U.S. 1026, 87 S. Ct. 753, 17 L. Ed. 2d 674 (1967).

Vested Right.

Where predecessor in title filed application to acquire island under law in effect prior to enactment of former similar section, he had a vested right to acquire the island which repeal of old law and enactment of new could not affect. *United States Gypsum Co. v. Uhlhorn*, 232 F. Supp. 994 (E.D. Ark. 1964), aff'd, 366 F.2d 211 (8th Cir. 1996), cert. denied, 385 U.S. 1026, 87 S. Ct. 753, 17 L. Ed. 2d 674 (1967) (decision under prior law).

22-6-204. Confirmation of prior sales.

(a) All sales made by the Commissioner of State Lands pursuant to this subchapter prior to July 1, 1991, are confirmed, and the title of all purchases under the deeds from the Commissioner of State Lands are quieted, established, and confirmed.

(b) The area described in any of the deeds as being conveyed shall extend only to the line of ordinary highwater and shall not extend to the bed or channels of the chutes or adjoining area which lies below the line of ordinary highwater, the title to which formations below the line of ordinary highwater is reserved in the State of Arkansas.

History. Acts 1933, No. 25, § 3; A.S.A. 1947, § 10-609; Acts 1991, No. 807, § 2.

Publisher's Notes. Acts 1933, No. 25, § 2, provided that the title to any island

sold under the provisions of Acts 1917, No. 282 [repealed], would extend down to, but not below, the highwater line.

SUBCHAPTER 3 — SCHOOL LANDS

SECTION.

- 22-6-301. Sale by county court on application.
- 22-6-302. Appraisers.
- 22-6-303. Notice of sale — Terms.
- 22-6-304. Rejection or confirmation — Disposition of purchase

SECTION.

- money — Deed by Commissioner of State Lands.
- 22-6-305. Certification of purchase money — Penalty.
- 22-6-306. Sale where no inhabitants in township.

Effective Dates. Acts 1885, No. 103, § 19: effective on passage.
Acts 1919, No. 344, § 8: effective on

passage. Emergency declared. Approved Mar. 22, 1919.

RESEARCH REFERENCES

Am. Jur. 63C Am. Jur. 2d, Pub. Lands, §§ 60, 62, 63, 135.

C.J.S. 73A C.J.S., Pub. Lands, § 85 et seq.

22-6-301. Sale by county court on application.

- (a) It shall be lawful for the county court of any county in which any permanent school lands and lots, as defined in § 22-6-111, are situated to order the lands or lots sold at public auction by the sheriff, in legal subdivisions, upon the application of any person who may desire to purchase the lands or lots and who will deposit with the clerk of the court a sum sufficient to pay the costs of the appraisalment, the estimate of the timber thereof, if any, and its commercial value, the survey thereof if one is necessary, and the advertisement and other costs of sale.
- (b) The applicant shall also file a written guaranty that he or she will bid at the sale at least two dollars and fifty cents (\$2.50) per acre if the acreage is land and the full appraised value if the acreage is in lots.
- (c) The applicant shall not, by reason of his or her application and deposit, acquire any preference right to purchase the land or lots at the sale, but when the sale of the land or lots is approved, the deposit so made shall be repaid out of the purchase price whether the applicant is the purchaser or not, except that if the lands should not be sold because of the failure of the applicant to make and complete his or her guaranty bid, the deposit made by him or her for the cost of sale shall be forfeited and not repaid.

History. Acts 1919, No. 344, § 2; C. & M. Dig., § 9104; Pope's Dig., §§ 8760, 11740; A.S.A. 1947, § 10-701.

Publisher's Notes. Acts 1919, No. 344, § 7, provided that nothing in that act would be construed to prevent the re-

demption of lands and town and city lots under §§ 26-37-310 and 26-37-311 or subsequent laws.

Cross References. Sale to federal government, § 22-7-101 et seq.

CASE NOTES

ANALYSIS	Cem. Ass'n, 224 Ark. 324, 273 S.W.2d 19 (1954).
Applicability.	Confirmation of Sale.
Confirmation of sale.	Filing of a petition to sell school lands gives the county court jurisdiction to sell the lands, and a confirmation of sale is conclusive on collateral attack as to whether the statutory requirements have been observed unless the contrary appears in the judgment itself. State ex rel.
Finding of market value.	
Right to sell.	
Applicability.	
This section relates to "state school land" and not to acquisition and sale of land by a "school district." Jewel v. Shiloh	

Attorney Gen. v. Wilson, 181 Ark. 683, 27 S.W.2d 106 (1930).

Finding of Market Value.

A recital in a judgment concerning a sale of school lands that the price received was not less than the market value was a sufficient finding that the price received was the market value as shown by the appraisalment. *State ex rel. Attorney Gen. v. Wilson*, 181 Ark. 683, 27 S.W.2d 106 (1930).

22-6-302. Appraisers.

(a) The county court shall appoint three (3) disinterested householders of the county who are familiar with real estate values to view and appraise the lands and lots and cause the timber, if any on the land, to be estimated.

(b) Each appraiser shall take an oath, which shall be filed in the court, that he or she does not desire or intend to buy the land or lots or any part thereof and that he or she will not directly or indirectly be or become interested in the purchase thereof at the sale to be made by the sheriff.

(c) Each appraiser shall receive for his or her services the sum of one dollar and fifty cents (\$1.50) for each day he or she is engaged in such service.

History. Acts 1919, No. 344, § 3; C. & M. Dig., § 9106; Pope's Dig., §§ 8762, 11742; A.S.A. 1947, § 10-703.

Publisher's Notes. This section, insofar as it relates to the appointment of

Right to Sell.

A statute passed by a state disposing of lands conveyed in the Enabling Act by the United States to be used by the state for school purposes does not impair the obligation of the contract, and the state has a right to subject the lands in its hands to the ordinary incidents of title. *Brooks v. Wilson*, 165 Ark. 477, 265 S.W. 53 (1924).

appraisers, may be superseded by § 22-5-306.

As to redemption of certain land, see § 22-6-301.

CASE NOTES

Noncompliance.

Failure of the appraisers to take and file the oath required by this section and to file their appraisalment was cured by the

confirmation of the sale of school lands. *State ex rel. Attorney Gen. v. Wilson*, 181 Ark. 683, 27 S.W.2d 106 (1930).

22-6-303. Notice of sale — Terms.

(a) The sheriff shall give notice by publication in some newspaper published in the county where the land is situated, at least four (4) weeks before the day of sale, that he or she will sell the land or lots at the courthouse door.

(b) Upon the day of the sale, the sheriff shall offer the lands or lots at public auction in separate legal subdivisions, if land, and by separate lots, if town lots.

(c) The sale shall be between the hours of 10:00 a.m. and 3:00 p.m. but may be continued from day to day, at the county courthouse door and between the same hours, until all has been sold or offered.

(d) All sales shall be for cash.

(e) If any bidder shall fail to perfect his or her bid by paying the cash, the sheriff shall resell the land, and the bidder shall be responsible for the difference between his or her bid and the price for which the land sold, which may be recovered from him or her in an action for the use and benefit of the permanent school fund.

(f) If any tract of land or lot is not sold, it may be offered again as provided in this section until sold without a new application.

History. Acts 1919, No. 344, § 4; C. & M. Dig., § 9107; Pope's Dig., §§ 8763, 11743; A.S.A. 1947, § 10-704.

Publisher's-Notes. As to redemption of certain land, see § 22-6-301.

CASE NOTES

Cited: State ex rel. Attorney Gen. v. Wilson, 181 Ark. 683, 27 S.W.2d 106 (1930).

22-6-304. Rejection or confirmation — Disposition of purchase money — Deed by Commissioner of State Lands.

(a) The sheriff shall report without delay all sales to the county court, which may reject or confirm the sale.

(b) If any sale is rejected, the county court may direct the sheriff to again advertise and offer the land or lots for sale.

(c) If the sale is confirmed by the court, the sheriff shall execute and deliver to the purchaser a certificate showing that he or she has purchased the land and the price paid for the land.

(d)(1) Out of the purchase price, the sheriff shall pay the cost of the sale, retaining for his or her services two percent (2%) of the gross amount received by him or her for the sale of the land, and immediately transmit the balance of the purchase price to the county treasurer of the county for and on account of the school districts located in the township in which the land is located and to be distributed to the districts in the proportion that the territory of each district within the township bears to the total territory of the township.

(2) The school districts shall use the funds for any school purposes, including construction of buildings and retirement of bonds.

(e)(1) Upon presentation of the certificate of purchase to the Commissioner of State Lands, the purchaser of the lands or lots, as the case may be, and his or her heirs or assigns, shall be entitled to a deed from the Commissioner of State Lands for the land or lots described in the certificate, and the Commissioner of State Lands is authorized to make conveyance of any land or lots sold under and by virtue of this subchapter.

(2) The Commissioner of State Lands shall keep a full and complete record of all such sales and of the deeds so issued and shall keep as correct records of sales as the reports made to him or her may enable him or her to do.

History. Acts 1885, No. 103, §§ 8, 18, p. 162; 1919, No. 344, § 5; C. & M. Dig., §§ 9108, 9110, 9113; Pope's Dig., §§ 8764, 8766, 11744, 11746, 11749; Acts 1955, No.

58, § 1; A.S.A. 1947, §§ 10-705, 10-706, 10-709.

Publisher's Notes. As to redemption of certain land, see § 22-6-301.

CASE NOTES

ANALYSIS

Constitutionality.
Duty of court.
Judgment conclusive.
Power of state.

Constitutionality.

This section is constitutional. *Sloan v. Blytheville Special Sch. Dist. No. 5*, 169 Ark. 77, 273 S.W. 397 (1925).

Duty of Court.

Where a sale of 16th section land has been made at the request of a majority of the adult inhabitants of the congressional township in which it lies, the county court should investigate the facts as to the regularity of the advertising, appraisal, and sale, the fairness of the sale, and adequacy of the price, and then either confirm the sale or reject it and order a new sale. *Williams v. State*, 76 Ark. 290, 88 S.W. 980 (1905).

Judgment Conclusive.

While a sale of 16th section lands by the tax collector is not a judicial sale, after

such sale has been confirmed by the county court, the sale is as conclusive against collateral attack as a judicial sale. *Reeves v. Conger*, 103 Ark. 446, 147 S.W. 438 (1912).

In ordering and confirming the sale of school land, the county court acts judicially and not ministerially, and where it has acquired jurisdiction, all who may claim an interest in the land are concluded by its judgment, valid on its face, unless they have assailed it by a direct proceeding in the action or by appeal. *State ex rel. Attorney Gen. v. Wilson*, 181 Ark. 683, 27 S.W.2d 106 (1930).

Power of State.

While the trust created by a compact between the United States and this state that 16th section lands should be used for school purposes is a sacred obligation imposed on the good faith of the state, the obligation is honorary, the legal title to such lands being vested in the state, whose power over the same is plenary and exclusive. *Brooks v. Wilson*, 165 Ark. 477, 265 S.W. 53 (1924).

22-6-305. Certification of purchase money — Penalty.

(a) Each county clerk shall, immediately after each sale of any part of school lands and lots under this subchapter, certify to the Auditor of State the amount of moneys received by the sheriff on account of the sale, and the Auditor of State shall charge this amount to the sheriff.

(b) Any neglect, failure, or refusal by any county clerk to perform any and all duties enjoined upon him or her by the provisions of this section shall be deemed a misdemeanor, and upon conviction, the clerk shall be fined in any sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense and may be removed from office.

History. Acts 1885, No. 103, §§ 10, 11, p. 162; C. & M. Dig., §§ 9111, 9112; Pope's Dig., §§ 8767, 8768, 11747, 11748; A.S.A. 1947, §§ 10-707, 10-708.

22-6-306. Sale where no inhabitants in township.

(a) Whenever there may be in the State of Arkansas any school lands or lots situated in any county in this state, and in a congressional township, or fraction thereof, where no inhabitants reside, any adult

inhabitant of the county, by written petition properly verified by the affidavit of the petitioner together with the affidavits of three (3) other adult inhabitants of the county and setting forth that there are no inhabitants residing in the congressional township or fraction thereof situated in the county may require the collector of taxes or, if there is no collector, the sheriff of the county wherein the land is situated, to sell the land.

(b) Sales of any lands under this section shall be made in the same manner as sales of other school lands or lots under this subchapter.

History. Acts 1919, No. 330, § 1; C. & M. Dig., § 9105; Pope's Dig., §§ 8761, 11741; A.S.A. 1947, § 10-702.

Publisher's Notes. As to redemption of certain land, see § 22-6-301.

SUBCHAPTER 4 — SWAMP AND OVERFLOWED LANDS

SECTION.

22-6-401. Authority to sell.

22-6-402. Application — Determination — Bond — Appraisers.

22-6-403. Conveyance.

SECTION.

22-6-404. Preemption rights.

22-6-405. Conflicting claims.

22-6-406. Disposition of moneys.

Cross References. Transfer of records of swamp and overflowed lands to commissioner, § 22-5-208.

Effective Dates. Acts 1855, p. 202, § 6: effective on passage.

Acts 1937, No. 128, § 7: effective on passage.

RESEARCH REFERENCES

Am. Jur. 63C Am. Jur. 2d, Pub. Lands, § 65.

C.J.S. 73A C.J.S., Pub. Lands, § 108 et seq.

22-6-401. Authority to sell.

The Commissioner of State Lands shall have full power and authority to sell lands granted by Congress to this state under the designation, "swamp and overflowed lands", and, in making the sales, he or she shall be governed by the provisions of this subchapter which may be in force at the time of sale.

History. Acts 1937, No. 128, § 1; Pope's Dig., § 8750; A.S.A. 1947, § 10-801.

Cross References. Transfer of records of swamp and overflowed lands to commissioner, § 22-5-208.

CASE NOTES

ANALYSIS

Duplicate certificates.
Patent.

Duplicate Certificates.

Where swamp land certificates were lost and duplicates were issued by the state officer, the presumption is that they

were rightly issued. *Belcher v. Harr*, 94 Ark. 221, 126 S.W. 714 (1910) (decision under prior law).

Patent.

A patent for swamp land issued by the

state is conclusive evidence of the legal title unless something to the contrary is shown. *Belcher v. Harr*, 94 Ark. 221, 126 S.W. 714 (1910) (decision under prior law).

22-6-402. Application — Determination — Bond — Appraisers.

(a) Upon the application made to the Commissioner of State Lands by any person, firm, or corporation seeking to purchase from the State of Arkansas any of the lands granted by Congress to this state under the designation of "swamp and overflowed lands", on which patents or entry certificates have not been issued by the state as shown by the records in the office of the Commissioner of State Lands, it shall be the duty of the Commissioner of State Lands to determine whether the lands described in the application are wild and unimproved, which fact shall be determined by the Commissioner of State Lands upon the filing with him or her of the affidavit of the county surveyor, the county judge, and one (1) other reliable and disinterested person residing in the county in which the lands are situated, which affidavit shall accompany the application to purchase.

(b) Should it be determined by the Commissioner of State Lands that the land sought to be purchased is wild and unimproved, he or she shall, upon the applicant's filing a bond with the Commissioner of State Lands with a surety to be approved by the Commissioner of State Lands that he or she will pay all costs of the appraisal as provided in this section, immediately notify the sheriff and ex officio collector of the county in which the land is situated of his or her finding and direct the sheriff and ex officio collector of the county to immediately appoint three (3) reliable and disinterested householders residing in the county as appraisers who shall make an actual inspection of the land sought to be purchased. After they have done so, it shall be the duty of the appraisers to make a report in writing and file the report with the Commissioner of State Lands.

(c)(1) The report of the appraisers shall set forth the estimated appraised value of the timber located on the lands, the estimated appraised value of any minerals or oil in the lands if any are known, and the appraised agricultural value of the lands.

(2) The aggregate of the appraisals shall be treated by the Commissioner of State Lands as the value of the lands for the purpose of sale.

(d) The report of the appraisers shall be accompanied by their oath, which shall state that they are householders and residents of the county in which the lands are located, that they have actually viewed the lands described in the report, that they have no interest in the sale thereof, that they are not related in any manner to the person who has made application to purchase the lands, and that the value fixed by them is, in their judgment, a fair and reasonable market value.

(e) The appraisers shall be entitled to receive the sum of two dollars and fifty cents (\$2.50) for each day necessary for making the inspection and appraisal, and they shall be paid by the applicant.

History. Acts 1937, No. 128, §§ 2, 3; far as it relates to the appointment of Pope's Dig., §§ 8751, 8752; A.S.A. 1947, appraisers, may be superseded by § 22-5-306, §§ 10-802, 10-803.

Publisher's Notes. This section, inso-

22-6-403. Conveyance.

(a) When the report of the appraisers has been filed with the Commissioner of State Lands, he or she shall notify the applicant of the value of the land as fixed by the appraisers and, upon the applicant's paying into the State Treasury the value of the lands as determined by the report of the appraisers and presenting his or her receipt to the Commissioner of State Lands, the Commissioner of State Lands shall issue a patent conveying to the applicant all the right, title, interest, and claim which the State of Arkansas may have acquired in and to the lands by virtue of 9 Stat. 519, Ch. 84.

(b) In no event shall any of the lands known as swamp and overflowed lands in this state be sold for less than two dollars and fifty cents (\$2.50) per acre.

(c) Should the applicant fail and neglect to pay into the State Treasury within a period of six (6) months from the date of the filing of the appraisers' report with the Commissioner of State Lands the amount necessary to purchase the lands, the Commissioner of State Lands may thereafter, for a period of three (3) years from the date of the filing of the appraisers' report, convey the land to any other person who may apply to purchase the land and pay into the State Treasury the price therefor as determined by the appraisers.

(d) If the land is not sold within three (3) years after the date of the filing of the appraisers' report with the Commissioner of State Lands, it cannot thereafter be sold or conveyed to anyone by the Commissioner of State Lands until the land has been reappraised in like manner as provided by this subchapter.

History. Acts 1937, No. 128, § 4; Pope's Dig., § 8753; A.S.A. 1947, § 10-804.

22-6-404. Preemption rights.

(a) Any person who, either in person or by and through his or her tenants, resides on or cultivates any of the swamp and overflowed lands which may have been confirmed to the state shall have a preemption right to the lands to be proved as provided in this section.

(b) Should the person, firm, or corporation making an application to purchase the lands show by affidavit of at least three (3) reliable and disinterested persons that he or she, either in person or by and through his or her tenants, is in actual possession of the lands under color of title

and that he or she and those under whom he or she claims title have been in the actual possession thereof for more than fifteen (15) years prior to the passage of this subchapter together with the certificate of the clerk of the county court showing that the lands described in the petition of the applicant have been regularly assessed on the tax books of the county in which they are located for more than twenty (20) years prior to the passage of this subchapter, and that the taxes so assessed have been paid by the applicant or those under whom he or she claims title, then the Commissioner of State Lands shall execute a deed or patent conveying to the applicant all the right, title, claim, and interest which the State of Arkansas may have acquired in and to the lands upon the applicant's paying into the State Treasury the sum of one dollar (\$1.00) per acre for the lands described in his or her application, together with a fee of one dollar (\$1.00) to the Commissioner of State Lands for the execution of the deed.

History. Acts 1937, No. 128, § 5; Pope's Dig., § 8754; A.S.A. 1947, § 10-805. term "passage of this subchapter," Acts 1937, No. 128, was signed by the Governor and became effective on February 24, 1937.

Publisher's Notes. In reference to the

22-6-405. Conflicting claims.

(a) When there are conflicting claims to swamp and overflowed lands, the Commissioner of State Lands may administer oaths and shall decide, upon proper notice to the parties and upon hearing testimony and statements under oath, to whom the patent certificate shall be issued in accordance with the law on the subject and shall issue the patent certificate accordingly.

(b) Should the other party whose claim is not allowed desire a certificate for the Auditor of State, upon which to have the amount paid by him or her for the land refunded, the Commissioner of State Lands shall issue the necessary certificate to enable him or her to do so, upon his or her surrendering his or her original certificate to the Commissioner of State Lands.

History. Acts 1855, § 5, p. 202; C. & M. Dig., § 6765; Pope's Dig., § 8697; A.S.A. 1947, § 10-807.

22-6-406. Disposition of moneys.

All moneys paid into the State Treasury for the purchase of swamp and overflowed lands shall be appropriated by the General Assembly for purposes which shall not be inconsistent with the provisions of the terms of 9 Stat. 519, Ch. 84.

History. Acts 1937, No. 128, § 6; Pope's Dig., § 8755; A.S.A. 1947, § 10-806. **Cross References.** Revenue stabilization and classification, § 19-5-101 et seq.

SUBCHAPTER 5 — TAX-FORFEITED LANDS

SECTION.

22-6-501. Transfer to state institutions.

22-6-502. Oil, gas, and mineral rights.

SECTION.

22-6-503. Recording in county — Fees.

22-6-504. Refund where state's title fails.

Preambles. Acts 1945, No. 266, contained a preamble which read: "Whereas, under the provisions of Act 331 of the Acts of the General Assembly of the State of Arkansas, approved March 16, 1939, all coal, oil, gas and mineral rights were reserved to the State of Arkansas, in lands disposed of by the state between September 15, 1939, and February 24, 1943; and

"Whereas, Act 94 of the Acts of the General Assembly of the State of Arkansas, approved February 24, 1943, repealed said Act 331 of 1939, in so far as it affected coal, oil, gas and mineral rights, without making provision for the issuance of deeds by the Commissioner of State Lands to such coal, oil, gas and mineral rights so reserved, to the owners of such lands so conveyed with such reservations;

"Therefore..."

Effective Dates. Acts 1939, No. 156, § 2: approved Feb. 28, 1939. Emergency clause provided: "Because of the urgent needs of certain institutions for such lands adjoining their properties, for building, recreational, and other purposes, an

emergency is hereby declared and this act shall be in force from and after its passage."

Acts 1943, No. 94, § 4: approved Feb. 24, 1943. Emergency clause provided: "Because of the confusion created by the reservation to the state of the oil, gas and mineral rights of tax-forfeited lands and this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage."

Acts 1945, No. 266, § 3: approved Mar. 20, 1945. Emergency clause provided: "It is ascertained and determined that the titles of the owners of such lands so conveyed are clouded by reason of such reservations and that, therefore, an emergency exists, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage."

Acts 1959, No. 221, § 3: July 1, 1959.

RESEARCH REFERENCES

Ark. L. Rev. Tax Forfeiture Problems in the Examination of Abstracts, 12 Ark. L. Rev. 333.

22-6-501. Transfer to state institutions.

(a)(1) The Commissioner of State Lands is authorized upon application of the director of any state department or agency, the management or the board of trustees of any state institution, or the chief executive of any county, city, or school district of this state to issue to the applying governmental unit a deed for land listed on the Commissioner of State Lands' records as having been forfeited for the nonpayment of taxes.

(2) The application shall include the following:

(A) The proposed use of the land;

(B) The proposed duration for the stated use; and

(C) The division or department designated for the maintenance and operation of the property once deeded. Moreover, the Commis-

sioner of State Lands is authorized to accept the application as submitted or recommend modifications to the application. The Commissioner of State Lands is further empowered to disallow any application determined by the Commissioner of State Lands to be contrary to the best interests of the health and general welfare of the state and its citizens.

(b)(1) The deed issued by the Commissioner of State Lands to a state department or agency, state institution, city, county, or school district shall contain restrictive covenants or reservations stating that should the governmental unit no longer desire to use the land for the proposed use stated in the application, said governmental unit shall submit a subsequent letter of application to the Commissioner of State Lands to request change in the use of the property, and the Commissioner of State Lands shall accept, modify, or disallow the request.

(2) Moreover, should the governmental unit determine that the property can no longer be utilized, the property shall revert to the state, be held by the Commissioner of State Lands, and be treated as tax-forfeited land subject to the powers and authority of the Commissioner of State Lands.

(3) Because this section applies to the disposition of tax-forfeited land, § 22-6-601 shall not apply herewith.

(c) No consideration shall be required for the transfer except the fee of one dollar (\$1.00) as required by law.

(d)(1) All deeds granted by the Commissioner of State Lands prior to the passage of this section are confirmed, and the title of all purchases under the deeds from the Commissioner of State Lands are quieted, established, and confirmed.

(2) Collection of any outstanding ad valorem property tax indebtedness shall be stayed by the Commissioner of State Lands while title to the property remains with the governmental unit.

(3) Should the property revert to the state pursuant to subsection (b) of this section, the property may be sold as prescribed by the Commissioner of State Lands.

History. Acts 1939, No. 156, § 1;
A.S.A. 1947, § 10-904; Acts 1991, No. 807,
§ 3.

22-6-502. Oil, gas, and mineral rights.

(a) Where tax-forfeited lands are disposed of by the state by return to private ownership by sale or redemption, the oil, gas, and mineral rights shall be a part of the fee and shall be conveyed with it, and the deeds shall not contain any restrictive covenants or reservations relative to the oil, gas, and mineral rights.

(b) Where tax-forfeited lands have previously been leased for oil and gas purposes and the lease is still in effect, a return of the lands to private ownership by sale or redemption shall not affect the validity of the existing lease, but at the expiration thereof, the oil, gas, and

mineral rights of the lands shall attach and become a part of the fee and pass to the owner of the fee.

(c) Oil, gas, and mineral rights in tax-forfeited lands which have been reserved in any deed from the state conveying the lands shall immediately pass to the present owners of the fee title to the lands. This provision shall not terminate any existing lease on such rights, but at the expiration of any existing lease, the rights shall pass to the owner of the fee.

(d) When so requested by the owner of any lands conveyed under the provisions of §§ 22-5-206, 22-5-301 — 22-5-305 and 22-5-307 — 22-5-311, in which the coal, oil, gas, and mineral rights were reserved to the State of Arkansas, the Commissioner of State Lands shall, upon the filing of an affidavit of ownership of the surface rights so sold and the payment of a deed fee of five dollars (\$5.00), issue to the owner of the lands a deed quitclaiming all interest of the State of Arkansas in and to all the coal, oil, gas, and mineral rights reserved in the deeds in the proportion that the surface rights in the lands owned bear to the whole tract sold.

History. Acts 1943, No. 94, §§ 1, 2;
1945, No. 266, § 1; A.S.A. 1947, §§ 10-931
— 10-933.

22-6-503. Recording in county — Fees.

(a) All deeds issued by the Commissioner of State Lands for lands, including city and town lots which have been certified for the nonpayment of taxes, shall be forwarded or delivered to the recorder of the county in which the lands, including city and town lots, are located, and the recorder shall record the deeds prior to their delivery to the purchaser or redeemer.

(b) Fees for recording the deeds shall be paid by the purchaser or redeemer at the time of making application to purchase or redeem the lands.

History. Acts 1959, No. 221, § 1;
A.S.A. 1947, § 10-942.

22-6-504. Refund where state's title fails.

(a) The Arkansas State Claims Commission is authorized and empowered to make refunds of amounts received by the state for the purchase or redemption of tax-forfeited lands or of funds received by the state from the sale of islands when it has been determined by the commission that the State of Arkansas has no further right, title, interest, or claim in or to the land or islands.

(b) No refund for more than one thousand dollars (\$1,000) may be made under this section to any one (1) individual, firm, or corporation during any fiscal year.

(c) One who claims a refund under this section shall furnish to the commission evidence which satisfies the commission that he or she is entitled to a refund and that the claimant has made diligent effort, where title failed by reason of a court proceeding, to require the plaintiff to pay all sums due the state at the time of sale by the state.

(d) Any claimant for a refund of purchase money shall be chargeable with the value of any timber, stone, or mineral or other thing of value sold, destroyed, or removed from the lands or islands involved.

(e) No refund shall be made under this section except the amount in excess of the sum legally due the state at the time of purchase or redemption.

(f) Any taxes or sums in lieu thereof, paid by anyone since the sale to the state, shall not be included in the amount, if any, determined to be due the state.

(g) The commission shall in each case determine the amount that should be refunded under the provisions of this section.

(h) The Director of the Arkansas State Claims Commission is designated the disbursing officer for the purpose of carrying out the provisions of this section.

History. Acts 1965, No. 345, §§ 1-5;
A.S.A. 1947, §§ 10-934 — 10-938.

SUBCHAPTER 6 — LANDS OF STATE INSTITUTIONS

SECTION.

22-6-601. Sale procedure.

22-6-602. Reimbursement of counties for use of lands.

SECTION.

22-6-603. Donation of lands for highway uses.

A.C.R.C. Notes. Acts 1997, No. 325, § 1, provided: "Notwithstanding the provisions of Arkansas Code § 22-6-601, the Arkansas Soil and Water Conservation Commission is hereby authorized, if the Commission determines the property to be surplus, to convey to Betty Jean Hayes and Richard V. Powell as the heir of Richard Vernon Powell, for a price not less than six hundred and fifty dollars (\$650.00) per acre plus interest at six percent (6%) compounded semi-annually from March 12, 1981, land formerly owned by Mr. Powell in White County, Arkansas more particularly described as:

"The SE $\frac{1}{4}$ NW $\frac{1}{4}$, the S $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, the W $\frac{1}{2}$ S $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, the SW $\frac{1}{4}$ NE $\frac{1}{4}$, the N $\frac{1}{2}$ NW $\frac{1}{2}$ SE $\frac{1}{4}$, the E $\frac{3}{4}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{3}{4}$ SE $\frac{1}{4}$, and the N $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, all in Section 16, Township 6 North, Range 9 West, in White County, Arkansas,

containing one hundred and seventy (170) acres, more or less, subject to reservations, easements and restrictions of record."

Effective Dates. Acts 1931, No. 199, § 2: effective on passage.

Acts 1937, No. 317, § 3: effective on passage.

Acts 1987, No. 982, § 3: Apr. 14, 1987. Emergency clause provided: "It is hereby found and declared that the confusion that now exists on a large scale concerning the handling of the Sale of Land, to the detriment of the taxing agencies and the public; that the clarification made by this act is immediately needed to eliminate said confusion and any resulting harmful effects on the public peace, health, safety and welfare. By reason thereof, an emergency is declared to exist and this act being necessary for the immediate preser-

vation of the public peace, health and safety shall take effect and be in force from and after its passage and approval.”

Acts 1994 (2nd Ex. Sess.), No. 65, § 5: Aug. 26, 1994. Emergency clause provided: “It is hereby found and determined by the General Assembly that the procedures for the sale or other disposition of certain state-owned lands should not be applicable to the transfer of state lands to political subdivisions of the state; that

this act so provides; and that this act should go into effect immediately in order to allow the state to transfer certain lands to political subdivisions as soon as possible. Therefore, an emergency is hereby declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval.”

22-6-601. Sale procedure.

(a)(1)(A) The several state boards or commissions having supervision of the affairs of the charitable, penal, correctional, educational, and other institutions of the State of Arkansas and all other state boards and commissions, except the State Highway Commission, the Arkansas State Game and Fish Commission, the Arkansas Natural Heritage Commission, the State Parks, Recreation, and Travel Commission, the Department of Higher Education, and institutions of higher education, and the executive heads of all state offices, departments, and agencies, all referred to separately as “state agency”, may sell or purchase, for cash in hand and upon compliance with the provisions of this section, the lands, in whole or in part, belonging to or under the supervision or control of the respective state agency or belonging to the state and held for the use or benefit of the state agency.

(B) State agencies may purchase lands, so that the lands, in whole or in part, shall belong to or be under the supervision or control of the respective state agency or belong to the state and be held for the use or benefit of the state agency.

(2) The provisions of this section shall not apply to:

(A) The sale of land by the Commissioner of State Lands;

(B) The transfer of state lands to political subdivisions of the State of Arkansas;

(C) The transfer of state lands between state entities; or

(D) The exchange of state lands for other lands which are suitable for state purposes if the Director of the Arkansas Building Authority has made a recommendation to the Governor that the exchange be made and if the Governor has approved the exchange.

(b)(1) State agencies may transfer lands in whole or in part to the Arkansas Building Authority for the use of that agency or other state agencies.

(2) In the event that the authority shall sell the lands at a later date, the provisions of this section shall apply, and the proceeds of the sale, less any expenses and liquidated damages, shall be deposited in the State Treasury as a nonrevenue receipt to the credit of the fund from which the agency that transferred the land to the authority is operated.

(c)(1) In the event that a state agency elects to sell certain of its lands or to purchase lands, the agency shall certify to the authority its proposal for any sale or purchase.

(2)(A) The state agency proposing the sale or purchase of land shall obtain the services of a qualified appraiser to appraise the lands so proposed to be sold or purchased, with notice to the director.

(B) The appraiser selected by the state agency, by education or experience, shall:

(i) Be capable of determining the value of lands, water and mineral rights, timber, and rural, agricultural, and noncultivable lands;

(ii) Understand legal descriptions of real properties;

(iii) Have a working knowledge of county and state real property records; and

(iv) Be capable of rendering dependable judgments of the values of properties, determining the flood plains of the properties, and of previous uses of the properties, which may result in environmental remediation.

(C) The appraiser shall be licensed and certified by the Arkansas Appraiser Licensing and Certification Board.

(D) The appraiser shall take an oath or certify that he or she will not, directly or indirectly, be engaged in the purchasing or selling of the land or give information to any agent, friend, secret partner, or other partner so as to secure advantages of the information to himself or herself or any person, association, or company to the prejudice or exclusion of any other person.

(d)(1)(A) The director shall furnish to the Governor:

(i) The appraisal;

(ii) The agency proposal to sell or purchase; and

(iii) The authority's recommendations.

(B) The Governor, if he or she approves the proposed sale or purchase, shall endorse his or her approval of the proposal and transmit a copy of the proposal to the director.

(e)(1) The authority shall give notice of the terms of the sale by publication in one (1) newspaper regularly published in Little Rock, Arkansas, and having a general circulation in the State of Arkansas, by four (4) weekly insertions therein.

(2) If there is a newspaper published in the county in which the lands are located having a general circulation therein, the notice shall also be published in that newspaper one (1) time a week for four (4) consecutive weeks, provided the land may be advertised for sale as a whole or in separate tracts.

(f) The notice shall specify a time and place, which time shall be not less than thirty (30) days from and after the date of the first insertion of the notice, for the receipt by the authority of sealed bids for the purchase of the lands.

(g)(1) Each bid shall be accompanied by a cashier's check, payable to the order of the state agency and drawn upon a bank or trust company doing business in this state, in an amount equal to one-tenth ($\frac{1}{10}$) of the bid.

(2) The proceeds of the cashier's check of the successful bidder shall be credited against the bid upon payment of the balance or shall be

retained by the state agency as liquidated damages upon failure to tender and pay the balance of the bid price.

(3) Cashier's checks of unsuccessful bidders shall be returned to them upon the completion of the sale to the successful bidder.

(4) The authority, at the time and place specified in the notice, or by announcement then and there, or at some other time or place, shall open the bids which have been received and proceed to accept the highest bid properly accompanied by a cashier's check for the lands in whole or in part as offered for such sale.

(h)(1) The lands shall be sold for the highest aggregate responsible bid, and no sale shall be otherwise than for cash, nor for less than the amount of the appraisal.

(2)(A)(i)(a) Upon approval by the Governor, lands may be sold to the highest responsible bidder for less than the amount of the appraisal if the bid process has been utilized and it has been determined and recommended by the agency director and the director that further solicitation of bids is unnecessary.

(b) Upon approval, the agency may enter into negotiations with the highest responsible bidder for the sale of the lands.

(ii) If negotiations are unsuccessful, the agency may enter into negotiations with the next highest responsible bidder.

(B) Nothing shall preclude an agency from reletting bids under this section if the negotiations as stated in subdivision (h)(2)(A) are unsuccessful.

(C) The Legislative Council shall review the sale of the land before the agency finalizes the sale.

(i)(1) Upon receipt from the successful bidder of the full amount of his or her bid, the state agency shall execute and deliver its deed conveying the lands to him or her and shall certify a copy of the deed to the Governor.

(2) The deed shall recite in detail the compliance with the respective provisions of this section, which recitals shall be prima facie evidence of the facts so set forth.

(3) The deed need not be acknowledged to entitle it to be recorded.

(4) The effect of the deed, the provisions of this section having been substantially complied with in the sale, shall be to vest the purchaser with the title of the lands, at law and in equity, in fee simple absolute.

(5) Any conveyance of title to lands owned by the State of Arkansas shall be subject to § 22-6-113.

(j) Upon receipt thereof, the proceeds of the sale, including any liquidated damages, shall be deposited in the State Treasury, as a nonrevenue receipt, to the credit of the fund from which the state agency is operated. Any unexpended balance of such proceeds remaining at the end of each fiscal year as certified to the Chief Fiscal Officer of the State by the state agency director may be carried forward until the end of the biennium following the biennium in which collected, after which any remaining balances shall be subject to § 19-5-1004.

(k)(1) Before any agency may receive donated land, the agency director shall certify the proposed donation request to the authority.

- (2) The director shall forward a recommendation to the Governor.
 (3) No donation shall be made without approval from the Governor.

History. Acts 1937, No. 317, § 1; Pope's Dig., § 12805; Acts 1963, No. 65, § 1; A.S.A. 1947, § 7-105; Acts 1987, No. 982, § 1; 1991, No. 786, §§ 35, 36; 1994 (2nd Ex. Sess.), No. 65, § 1; 1995, No. 853, § 1; 1997, No. 265, §§ 1-4; 1999, No. 219, § 1; 2001, No. 741, §§ 1-3; 2003, No. 364, §§ 16, 17.

A.C.R.C. Notes. Acts 1987, No. 982, § 1, provided, in part, that if any agreement for the sale of any lands by the state or any of its institutions by the Board of Trustees has been made prior to this act, it will not be necessary for notice of publication, appraisal, or bidding of the lands to be made as mentioned; but in all events, the sale of the lands shall require the Governor's approval, and the title to the lands shall be vested in the grantee upon such approval, and payment shall be made to the Board of Trustees or such other state agent as may be authorized to receive payment for these conveyances.

Publisher's Notes. As to validation of land sales not in compliance with this section, see Acts 1959, No. 223.

Acts 1991, No. 786, § 37, provided: "The enactment and adoption of this Act shall not repeal, expressly or impliedly, the acts passed at the regular session of the 78th General Assembly. All such acts shall have full effect and, so far as those acts intentionally vary from or conflict with any provision contained in this Act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987."

Amendments. The 1999 amendment, in (g)(1), substituted "a cashier's check" for "the bidder's check" and deleted "and certified by" following "drawn upon"; inserted "cashier's" in (g)(2) and (g)(4); sub-

stituted "Cashier's checks" for "Checks" in (g)(3); and made stylistic changes.

The 2001 amendment redesignated former (a)(1) as present (a)(1)(A) and inserted "the Department of Higher Education, and institutions of higher education," and substituted "may sell" for "are each empowered from time to time to sell"; added (a)(1)(B); redesignated former (a)(2)(A) as present (a)(2)(A)-(B) and made related changes; added (a)(2)(C)-(D); in (b)(1), substituted "may transfer" for "are empowered to transfer," and inserted "Arkansas"; in (c)(1), inserted "or to purchase lands," and added "or purchase"; redesignated former (c)(2) as present (c)(2)(A)-(D); in (c)(2)(A), inserted "or purchase," "or purchased," and "Arkansas"; substituted "purchasing or selling" for "purchase" in (c)(2)(D); redesignated former (d)(1) as (d)(1)(A) and redesignated the remaining subsections accordingly; inserted "or purchase" in (d)(1)(A)(ii) and (d)(1)(B); substituted "director" for "Director of State Building Services" (d)(1)(B); redesignated former (h) as present (h)(1); added (h)(2) and (k); and made gender neutral changes and minor stylistic changes throughout.

The 2003 amendment, in (a)(1)(A), inserted "or purchase" and made minor punctuation changes; substituted "Director of the Arkansas Building Authority" for "director" in (a)(2)(D); in (h)(1), inserted "responsible" and deleted "such" preceding "sale"; added (h)(2)(A)(ii) and (h)(2)(A)(i)(b); in (h)(2)(A)(i)(a), inserted "to the highest responsible bidder" and substituted "the Arkansas Building Authority" for "Arkansas State Building Services"; inserted present (h)(2)(B); and redesignated former (h)(2)(B) as present (h)(2)(C).

CASE NOTES

Agencies.

As used in this section, the word "institution" means state agencies such as the State Hospital, the State Penitentiary, the State Tuberculosis Sanatorium, and other agencies of a similar nature having charge of buildings and properties for carrying out the purposes for which the state oper-

ates such institutions. *Harris v. Emmerling*, 224 Ark. 40, 271 S.W.2d 618 (1954).

The Resources and Development Commission, which was created to promote and develop the state but which did not have the supervision of the affairs of any institution, did not have authority to sell

land conveyed to the state for use of the commission. *Harris v. Emmerling*, 224 Ark. 40, 271 S.W.2d 618 (1954).

22-6-602. Reimbursement of counties for use of lands.

(a) It is declared the policy of the State of Arkansas to reimburse, annually or biennially, the counties from which the State of Arkansas has acquired or may acquire title to, or use of, acreage farm lands aggregating more than one thousand (1,000) acres for the use of its penal farms or other state institutions in the proportion that the value of the acreage acquired or used bears to the total real value of the counties.

(b) The benefit assessment on all of the state's acquired acreage shall be in favor of any and all improvement districts comprising the lands.

History. Acts 1937, No. 317, § 2; Pope's Dig., § 12806; A.S.A. 1947, § 7-106.

22-6-603. Donation of lands for highway uses.

(a) The respective boards charged with the management or control of the charitable, penal, or correctional institutions and institutions of higher learning of the State of Arkansas and other agencies of the state are authorized and empowered to donate, without compensation to the public, rights-of-way over or along lands under the control of the boards or agencies to counties, municipalities, road districts, or other public agencies for use as public highways, roads, or streets, when, in the discretion of the respective governing bodies of the state institutions and agencies, it may be deemed necessary or proper.

(b) The donations may be upon such terms, restrictions, or conditions as the boards or agencies may impose, and the boards and agencies are empowered to execute deeds or conveyances for the rights-of-way.

History. Acts 1931, No. 199, § 1; Pope's Dig., § 8746; Acts 1945, No. 232, § 1; A.S.A. 1947, § 7-107.

CHAPTER 7

FEDERAL PROPERTY IN ARKANSAS

SUBCHAPTER

- 1. GENERAL PROVISIONS.**
- 2. PARTICULAR PROPERTIES.**
- 3. FORT CHAFFEE.**

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

22-7-101. Purchase of real property by United States — Limited cession of jurisdiction — Right to tax.

SECTION.

22-7-102. Transfer of legislative jurisdiction over lands — Procedure.

Effective Dates. Acts 1903, No. 180, § 3: effective on passage. Acts 1959, No. 256, § 5: Jan. 1, 1960.

22-7-101. Purchase of real property by United States — Limited cession of jurisdiction — Right to tax.

(a) The State of Arkansas consents to the purchase by the United States of any site or ground for the erection of any armory, arsenal, fort, fortification, navy yard, customhouse, lighthouse, lock, dam, fish hatchery, or other public buildings of any kind.

(b) The jurisdiction of this state within and over all grounds purchased by the United States within the limits of this state is ceded to the United States, except that this cession of jurisdiction shall not prevent execution of any process of this state, civil or criminal, upon any person who may be on these grounds.

(c) This state releases and relinquishes its right to tax any site, grounds, or real estate, and all improvements which may be there or erected there during the time the United States remains the owner thereof.

History. Acts 1903, No. 180, §§ 1, 2, p. 346; C. & M. Dig., §§ 4564, 4565; Pope's Dig., §§ 5644, 5645; A.S.A. 1947, §§ 10-1101, 10-1102.

CASE NOTES

ANALYSIS

Military reservations.
Other public buildings.
Rights of school district.

Military Reservations.

Personal property located within the Camp Pike Military Reservation was not subject to state tax law. *Surplus Trading Co. v. Cook*, 281 U.S. 647, 50 S. Ct. 455, 74 L. Ed. 1091 (1930).

Service on defendant soldier, a resident of Oklahoma, through Secretary of State in suit for damages arising out of automobile accident on military reservation highway in state is not valid since highway in military reservation is not a public high-

way of the state. *Camden v. Harris*, 109 F. Supp. 311 (W.D. Ark. 1953).

Other Public Buildings.

Buildings constructed by the federal government on its property to be used for the relocation of the Japanese were held within the term "other public buildings of any kind" as used in this section. *Lynch v. Hammock*, 204 Ark. 911, 165 S.W.2d 369 (1942).

Rights of School District.

The jurisdiction or legal rights of a school district for school purposes are not divested by the acquisition of the land by the United States. *Harmony Grove Sch. Dist. No. 1 v. Camden Sch. Dist. No. 35*, 227 Ark. 902, 302 S.W.2d 281 (1957).

22-7-102. Transfer of legislative jurisdiction over lands — Procedure.

(a)(1) In order to acquire all or any measure of legislative jurisdiction of the kind addressed in United States Constitution, Article I, Section 8, Clause 17 over any land or other area, or in order to relinquish that legislative jurisdiction or any measure thereof which may be vested in the United States, the United States, acting through a duly authorized department, agency, or officer shall file with the Governor a notice of intention to acquire or relinquish legislative jurisdiction, together with a sufficient number of duly authenticated copies thereof to meet the recording requirements of subsection (c) of this section.

(2) The notice shall contain a description adequate to permit accurate identification of the boundaries of the land or other area for which the change in jurisdictional status is sought and a precise statement of the measure of legislative jurisdiction sought to be transferred.

(3) Immediately upon receipt of the notice, the Governor shall furnish the Attorney General with a copy and shall request his or her comments and recommendations thereon.

(b)(1) The Governor shall transmit the notice, together with his or her comments and recommendations, if any, and the comments and recommendations of the Attorney General, if any, to the next session of the General Assembly, which shall be constitutionally competent to consider the notice, comments, and recommendations.

(2) Unless prior to the expiration of the legislative session to which the notice is transmitted the General Assembly has adopted an act approving the transfer of legislative jurisdiction as proposed in the notice, the transfer shall not be effective.

(c) The Governor shall cause a duly authenticated copy of the notice and act to be recorded in the office of the recorder of the county where the land or other area affected by the transfer of jurisdiction is situated, and upon such recordation, the transfer of jurisdiction shall take effect.

(d) The Governor shall cause copies of all documents recorded pursuant to this section to be filed with the Secretary of State.

(e) In no event shall any transfer of legislative jurisdiction between the United States and this state take effect, nor shall the Governor transmit any notice proposing such a transfer pursuant to subsection (b) of this section unless, under the applicable laws of the United States:

(1) This state shall have jurisdiction to tax private persons, private transactions, and private property, real and personal, resident, occurring, or situated within the land or other area to the same extent that this state has jurisdiction to tax persons, transactions, and property, resident, occurring, or situated generally within this state;

(2) Any civil or criminal process lawfully issued by competent authority of this state or any of its subdivisions may be served and executed within the land or other area to the same extent and with the same effect as the process may be served and executed generally within this state, except that the service and execution of process within land

or other areas over which the federal government exercises jurisdiction shall be subject to such rules and regulations issued by authorized officers of the federal government, or of any department, independent establishment, or agency thereof, as may be reasonably necessary to prevent interference with the carrying out of federal functions; and

(3) This state shall exercise over the land or other area the same legislative jurisdiction which it exercises over land or other areas generally within this state, except that the United States shall not be required to forego such measure of exclusive legislative jurisdiction as may be vested in or retained by it over the land or other area pursuant to this section, and this state's exercise of jurisdiction shall be without prejudice to the right of the United States to assert and exercise such concurrent legislative jurisdiction as may be vested in or retained by it over the land or other area.

(f) Nothing in this section shall be construed to prevent or impair any transfer of legislative jurisdiction to this state occurring by operation of law.

History. Acts 1959, No. 256, §§ 1-3; A.S.A. 1947, §§ 10-1127, 10-1128, 10-1129.

CASE NOTES

ANALYSIS

Notice of acceptance.
Repeal by implication.

Notice of Acceptance.

Where there is no notice of acceptance of jurisdiction over the land by the federal government, jurisdiction remains in the state. *Kurck v. State*, 235 Ark. 688, 362 S.W.2d 713 (1962), cert. denied, 373 U.S.

910, 83 S. Ct. 1299, 10 L. Ed. 2d 412 (1963) (decision under prior law).

Repeal by Implication.

This section repealed Acts 1939, No. 327, § 1, by implication, since the provisions of that act and this section were in conflict. *Kurck v. State*, 235 Ark. 688, 362 S.W.2d 713 (1962), cert. denied, 373 U.S. 910, 83 S. Ct. 1299, 10 L. Ed. 2d 412 (1963).

SUBCHAPTER 2 — PARTICULAR PROPERTIES

SECTION.

- 22-7-201. National cemeteries.
- 22-7-202. National forests generally.
- 22-7-203. National forests — Fish and game regulations.
- 22-7-204. National forests — Sale of tax-forfeited lands.
- 22-7-205. Ouachita and Ozark National Forests — Sale of school or tax lands.
- 22-7-206. Waterfowl and wildlife refuges.
- 22-7-207. Submarginal land.
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SECTION.

- 22-7-212. Cession of jurisdiction — Certain property in Fort Smith.
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- 22-7-214. Hot Springs National Park — Hot Springs Mountain.
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- 22-7-216. Hot Springs National Park — Tourist camps.
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- 22-7-218 — 22-7-220. [Repealed.]

SECTION.

- 22-7-221. Lands necessary to Ouachita River Navigation Project.
- 22-7-222. Concurrent jurisdiction — Certain tract in Camp Robinson.
- 22-7-223. Concurrent jurisdiction — Department of Veterans Affairs Medical Centers, Arkansas Post National Memorial, Buffalo National River, Fort Smith National Historic Site, Pea Ridge National Military Park.
- 22-7-224. Donation of real property to Department of Veterans Affairs.

SECTION.

- 22-7-225. Federal relinquishment of exclusive legislative jurisdiction pertaining to the administration of criminal laws.
- 22-7-226. Cession of concurrent jurisdiction — Federal prisons.
- 22-7-227. Acceptance of jurisdiction by the United States.
- 22-7-228. Cession of concurrent jurisdiction — Little Rock.
- 22-7-229. Cession of concurrent jurisdiction — Hot Springs.
- 22-7-230. Acceptance by the United States.

Preambles. Acts 1867, No. 60, contained a preamble which read: "Whereas, by a resolution of Congress, approved April 13, 1866, the Secretary of War was authorized and required to take immediate measures to preserve from desecration the graves of the soldiers of the United States who fell in battle or died of disease in the field and in the hospital during the war of the rebellion; and to secure suitable burial places in which they may be properly interred; and

"Whereas, the Secretary of War is about to purchase suitable grounds within the limits of this state for the establishment thereon of 'national cemeteries,' within which are to be buried the bodies of those described in said resolution; and

"Whereas, it is provided in paragraph 1059, United States Army regulations, as revised, 1863, that previous to the expenditure of any money in the purchase of any land within any state of the United States for the use of the general government, the legislature of the state within which such purchase shall be made shall first cede all jurisdiction over such land ..."

Acts 1873, No. 10, contained a preamble which read: "Whereas, by an Act of Congress, approved June 7, 1872, entitled 'An act to provide for a building for the use of the federal courts, post office, internal revenue, and other civil offices in the city of Little Rock, Arkansas,' an appropriation of \$100,000 was made to carry out the objects of said act; and

"Whereas, it is provided by said act

"That no part of the sum therein appropriated shall be used or expended until the State of Arkansas shall duly release and relinquish its jurisdiction over the same, and its right to tax said site and the property which may be thereon during the time the United States shall be, or remain, the owner thereof."

"Therefore..."

Acts 1889, No. 11, contained a preamble which read: "Whereas, by an Act of Congress entitled, 'An act for a public building at Helena, Arkansas,' approved April 11, 1888, an appropriation of \$75,000 was made to carry out the objects of said act; and

"Whereas, it is provided by said act 'that no part of said sum shall be expended until a valid title to the said site shall be vested in the United States, nor until the State of Arkansas shall cede to the United States exclusive jurisdiction over the same during the time the United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of said state and the service of civil process therein;'

"Therefore..."

Acts 1889, No. 40, contained a preamble which read: "Whereas, by an Act of Congress entitled, 'An act for a public building at Texarkana, Arkansas, approved, 1888' an appropriation of \$10,000 was made to carry out the objects of said act; and

"Whereas, it is provided by said act that no part of said sum shall be expended until a valid title to the said site shall be

vested in the United States, nor until the State of Arkansas shall cede to the United States exclusive jurisdiction over the same during the time the United States shall be, or remain, the owner thereof, for all purposes except the administration of the criminal laws of said state and the service of civil process therein;

"Therefore..."

Acts 1891, No. 19, contained a preamble which read: "Whereas, by an Act of Congress entitled 'An act for a public building at Camden, Arkansas, and appropriating \$25,000 to carry out the objects of said act'; and

"Whereas, it is provided by said act that no part of said sum shall be expended until a valid title to the said site shall be vested in the United States; nor until the State of Arkansas shall cede to the United States exclusive jurisdiction over the same during the time the United States shall be or remain the owner thereof for all purposes except the administration of the criminal laws of said state and the service of civil process therein;

"Therefore..."

Acts 1925, No. 230, contained a preamble which read: "Whereas, the government of the United States without consent of the General Assembly of the State of Arkansas has established and will acquire additional areas of forest lands in said state for the purpose of conserving the navigability of navigable streams, and said lands and waters thereon are and will be stocked naturally and artificially with game animals, game and non-game birds and fish; and

"Whereas, in order adequately to enjoy and protect the occupancy and use of said area, it is important that the United States be fully authorized to make all needful rules and regulations in respect to such animals, birds and fish;

"Therefore..."

Acts 1935, No. 181, contained a preamble which read: "Whereas, the government proposes to buy large tracts of nonproductive submarginal lands and set same aside as parks, recreational or other appropriate uses; and

"Whereas, this program will be of great benefit to the people generally, and the state desires to cooperate in that program; and

"Whereas, the state owns certain lands in the areas now proposed, and which may

hereafter be proposed, as proper submarginal land projects, and it is the policy of the state to grant the government such lands;

"Therefore..."

Acts 1983, No. 239, contained a preamble which read: "Whereas, the United States presently exercises exclusive legislative jurisdiction over approximately 31.5 acres of fee-owned land comprising the United States Army Reserve Center located at 8001 Camp Robinson Road in North Little Rock, Arkansas; and

"Whereas, the United States wishes to relinquish to the State of Arkansas such legislative jurisdiction as will enable the state and its political subdivisions to exercise, concurrently with the United States, law enforcement powers within the Reserve Center area; and

"Whereas, Act 256 of 1959, provides that when the Governor receives notice from the United States of the intention to relinquish legislative jurisdiction over such lands, the Governor shall submit the question of accepting such jurisdiction to the next session of the state legislature for adoption and further provides that unless prior to the expiration of that legislative session the legislature adopts an act approving the transfer, the transfer shall not be effective; and

"Whereas, it is in the best interest of the State of Arkansas and Pulaski County that the state accept concurrent jurisdiction over the hereinafter described area;

"Now, therefore..."

Effective Dates. Acts 1867, No. 60, § 2: effective on passage.

Acts 1873, No. 10, § 2: effective on passage.

Acts 1889, No. 20, § 2: effective on passage.

Acts 1893, No. 35, § 4: effective on passage.

Acts 1903, No. 114, § 2: effective on passage.

Acts 1917, No. 148, § 3: effective on passage.

Acts 1919, No. 533, § 2: effective on passage. Emergency declared. Approved Mar. 28, 1919.

Acts 1925, No. 230, § 2: effective on passage. Emergency declared. Approved Mar. 27, 1925.

Acts 1927, No. 108, § 3: effective on passage.

Acts 1933, No. 166, § 1: approved Mar.

25, 1933. Emergency clause provided: "Whereas, there is an immediate need for jurisdiction of the lands herein, an emergency is declared to exist, and this act shall take effect and be in full force from and after its passage."

Acts 1935, No. 88, § 3: Mar. 2, 1935. Emergency clause provided: "Whereas, the various counties of this state are losing much revenue by reason of the present inability of the state to sell its tax forfeited lands to the United States government for forestry purposes, and, whereas, it is necessary to perfect functioning of the various county governments that additional funds be supplied; now, therefore, an emergency is declared and this act being necessary for the immediate preservation of the public peace, health and safety, it shall become effective immediately upon its passage and approval."

Acts 1935, No. 181, § 3: Mar. 22, 1935. Emergency clause provided: "Whereas, some areas have already been designated by the federal government in the State of Arkansas as proper for the operation of its submarginal land program, and large numbers of people are working to put the program in effect, and it is necessary that the state be prepared to cooperate in said program when it is necessary and proper to do so, and an emergency is, therefore, hereby declared to exist, and this act shall take effect and be in full force immediately upon its passage and approval."

Acts 1963, No. 204, § 2: July 1, 1963.

Acts 1975, No. 122, § 4: Feb. 7, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present laws of the state are not clear regarding the authority of the state and of the various counties to transfer lands to the United States Government in connection with navigation projects, wildlife refuge projects and other projects highly beneficial to the state; that it is essential to the development of certain such projects that the law be clarified

immediately in order to specifically authorize the transfer of state and county owned lands to the United States Government for such projects; that this act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1977 (Ex. Sess.), No. 21, § 5: Aug. 15, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-First General Assembly meeting in Extraordinary Session that it is imperative that the veterans of the State of Arkansas be able to receive medical care equal to any available in this country and that the emotionally disturbed youth in our state have available an intensified mental health treatment program. It is therefore resolved that an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 1111, § 3 and No. 1114, § 3: Apr. 26, 1979. Emergency clauses provided: "It is hereby found and determined by the Seventy-Second General Assembly that the immediate effectiveness of this act is necessary for providing psychiatric nursing home care in the State of Arkansas. Therefore an emergency is declared to exist and this act, being necessary for the immediate preservation of the public health and safety, shall be in full force and effect from and after the date of its passage and approval."

Acts 1991, No. 963, § 7: Mar. 29, 1991. Emergency clause provided: "To preserve the public peace, it is necessary that the Act become immediately operative. It is therefore declared to be an emergency measure."

22-7-201. National cemeteries.

The jurisdiction of this state within and over all lands purchased by the United States on which national cemeteries may be established within the limits of this state is ceded to the United States so far as the permanent enclosures of such national cemeteries may extend and no further.

History. Acts 1867, No. 60, § 1, p. 153; C. & M. Dig., § 4553; Pope's Dig., § 5633; A.S.A. 1947, § 10-1104.

22-7-202. National forests generally.

(a) The consent of the State of Arkansas is given to the acquisition by the United States, by purchase, by exchange, or otherwise with adequate compensation, of such land in Arkansas as, in the opinion of the federal government, may be needed for the establishment, consolidation, and extension of national forests in the state for the purpose of the Weeks Law.

(b) No owner of land which the United States proposes to acquire under the provisions of this section shall be required to sell by institution of proceedings for condemnation, except for such tracts as are needed for access, rights-of-way, those having a peculiar recreational or scenic value, and other such uses in the public interest.

(c) Power is conferred upon Congress to pass laws and to make, or provide for the making of, such rules and regulations of both a civil and criminal nature, and provide punishment for the violation thereof as, in its judgment, may be necessary for the administration, control, and protection of any lands acquired under the provisions of this section.

History. Acts 1917, No. 148, §§ 1, 2, p. 797; C. & M. Dig., §§ 4566, 4567; Acts 1927, No. 108, §§ 1, 2; Pope's Dig., §§ 5646, 5647; Acts 1963, No. 204, § 1; 1967, No. 657, § 1; A.S.A. 1947, §§ 10-1105, 10-1106.

U.S. Code. The Weeks Law, referred to in this section, is codified as 16 U.S.C. §§ 480, 500, 515-519, 521, 552, and 563.

CASE NOTES

Cited: United States v. Reeves, 39 F. Supp. 580 (W.D. Ark. 1941).

22-7-203. National forests — Fish and game regulations.

(a) The consent of the State of Arkansas is given to the making by Congress, or under its authority, of all such rules and regulations as the federal government may determine to be needful in respect to game animals and game and nongame birds and fish on, in, or over national forestlands within the State of Arkansas.

(b) The rules and regulations must be approved by the Arkansas State Game and Fish Commission before they can be enforced.

(c) The authority to enforce concurrent rules and regulations is extended jointly to the federal government and to the commission.

History. Acts 1925, No. 230, § 1; Pope's Dig., §§ 5648, 6000; Acts 1941, No. 272, § 1; A.S.A. 1947, § 10-1107.

22-7-204. National forests — Sale of tax-forfeited lands.

(a) Upon application of any duly authorized person of the National Forest Service to purchase tax-forfeited lands lying within or contiguous to any national forest for the purpose of adding the lands to the national forest, the Commissioner of State Lands shall set aside and withhold the lands from sale for such time as may be necessary for the federal government to perfect its title in and to the lands.

(b) The act of the Commissioner of State Lands to set aside the land shall vest title in the United States to the extent that title in the lands can be perfected.

(c) Immediately upon the perfection and approval of the title in the lands, the purchaser shall comply with the provisions of §§ 26-37-101 — 26-37-105, 26-37-201 — 26-37-205, and 26-37-301 — 26-37-303, and, thereupon, the Commissioner of State Lands shall issue his or her deed conveying to the purchaser all the rights, title, and interest of the State of Arkansas in and to the lands.

History. Acts 1935, No. 88, §§ 1, 2;
Pope's Dig., §§ 8722, 8723; A.S.A. 1947,
§§ 10-1108, 10-1109.

22-7-205. Ouachita and Ozark National Forests — Sale of school or tax lands.

(a) The Commissioner of State Lands is authorized, at his or her discretion, to negotiate with the representatives of the federal government for the sale of all or any part of the school or tax lands situated within the Ouachita and Ozark National Forests. Upon reaching a satisfactory price agreement, he or she is authorized to give options, to sign purchase contracts, to execute deeds to the United States or its authorized representative, and to accept payment for the lands but only if the sales are made at a price of not less than two dollars and fifty cents (\$2.50) per acre.

(b) No land shall be sold to the federal government for less than its appraised value, with such value to be ascertained and such sale to be made as provided by law for the sale of state and school lands.

(c) Nothing in this section shall be construed to prohibit land being sold to private parties in the manner provided by law unless under the control of and option to the federal government and during the term of the option, except that no such lands shall be sold for less than two dollars and fifty cents (\$2.50) per acre.

History. Acts 1919, No. 533, § 1; C. &
M. Dig., § 6786; Pope's Dig., § 8721;
A.S.A. 1947, § 10-1110.

22-7-206. Waterfowl and wildlife refuges.

(a) For the purpose of more effectively cooperating with the United States in the acquisition, development, and maintenance of refuges for

migratory waterfowl and other wildlife, consent is granted to the United States to acquire, by purchase, condemnation, gift, lease, or exchange, lands and waters within the State of Arkansas which the Secretary of Agriculture may deem necessary and suitable in furtherance of the Migratory Bird Treaty, the Migratory Bird Treaty Act, and the Migratory Bird Conservation Act.

(b) The jurisdiction of the State of Arkansas, both civil and criminal, over persons in the areas acquired and on privately owned property thereon shall not be affected or changed by reason of their acquisition and administration by the United States as migratory waterfowl and other wildlife reservations, except insofar as the punishment of offenses against the United States is concerned.

(c) Nothing in this section is intended to interfere with the operation of the game laws of the State of Arkansas applying to migratory game birds, insofar as they do not permit what is forbidden by federal law.

History. Acts 1937, No. 114, § 1; Pope's Dig., § 5999; A.S.A. 1947, § 10-1111.

U.S. Code. The Migratory Bird Treaty, August 16, 1916, U.S. — Great Britain, referred to in this section, may be found at 39 Stat. 1702, T.S. 628.

The Migratory Bird Treaty Act, referred to in this section, is codified as 16 U.S.C. § 703 et seq. The Migratory Bird Conservation Act, referred to in this section, is codified as 16 U.S.C. § 715 et seq.

22-7-207. Submarginal land.

(a) The Commissioner of State Lands is authorized and empowered to grant and convey to the federal government, or to any duly constituted agency thereof, all state lands owned by the State of Arkansas in any area designated as a submarginal land project when the Commissioner of State Lands has been officially notified by the proper government authority that the project has proceeded to the stage where it is necessary and proper for the state to execute and deliver the conveyance.

(b) The state shall convey only such right in and to the lands as it may hold therein, and it shall not be liable on account of the failure of title of any of the lands.

History. Acts 1935, No. 181, §§ 1, 2; Pope's Dig., §§ 8747, 8748; A.S.A. 1947, §§ 10-1112, 10-1113.

CASE NOTES

Cited: United States v. Williams, 109 F. Supp. 456 (W.D. Ark. 1952).

22-7-208. Building site — Little Rock.

(a) The State of Arkansas consents to the purchase by the United States of a site for public buildings mentioned in 17 Stat. 280, Ch. 324, and cedes jurisdiction to the United States over any lot, parcel, or block of ground within the corporate limits of the City of Little Rock, not

exceeding in area three hundred feet (300') square, which may be purchased by the United States as a site for a building for the accommodation of the United States circuit and district courts, post office, internal revenue, and other government offices, under 17 Stat. 280, Ch. 324.

(b) The state releases and relinquishes its right to tax the site and all improvements which may be thereon during the time the United States remains the owner thereof, except that this cession of jurisdiction shall not prevent the execution of any process of this state, civil or criminal, on any person who may be on such site.

History. Acts 1873, No. 10, § 1, p. 11;
C. & M. Dig., § 4554; Pope's Dig., § 5634;
A.S.A. 1947, § 10-1114.

22-7-209. Building site — Helena.

The State of Arkansas consents to the purchase by the United States of a site for a public building mentioned in 25 Stat. 84, Ch. 80, and cedes to the United States exclusive jurisdiction over any lot or block of ground within the corporate limits of the City of Helena, not exceeding in area three hundred sixty feet (360') square, which may be so purchased by the United States, during the time the United States remains the owner thereof, for all purposes except the administration of the criminal laws of the state and the service of civil process therein.

History. Acts 1889, No. 11, § 1, p. 9; C.
& M. Dig., § 4555; Pope's Dig., § 5635;
A.S.A. 1947, § 10-1115.

22-7-210. Building site — Texarkana.

The State of Arkansas consents to the purchase by the United States of a site for a public building mentioned in 25 Stat. 87, Ch. 128, and cedes to the United States exclusive jurisdiction over any lot or block of ground within the corporate limits of the City of Texarkana, not exceeding in area three hundred sixty feet (360') square, which may be so purchased by the United States, during the time the United States remains the owner thereof, for all purposes except the administration of the criminal laws of the state and the service of civil process therein.

History. Acts 1889, No. 40, § 1, p. 55;
C. & M. Dig., § 4559; Pope's Dig., § 5639;
A.S.A. 1947, § 10-1116.

22-7-211. Building site — Camden.

The State of Arkansas consents to the purchase by the United States of a site for a public building mentioned in 26 Stat. 702, Ch. 39, and cedes to the United States exclusive jurisdiction over any lot or block of ground within the corporate limits of the City of Camden, not exceeding in area three hundred sixty feet (360') square, which may be so

purchased by the United States, during the time the United States remains the owner thereof, for all purposes except the administration of the criminal laws of the state and the service of civil process therein.

History. Acts 1891, No. 19, § 1, p. 18;
C. & M. Dig., § 4560; Pope's Dig., § 5640;
A.S.A. 1947, § 10-1117.

22-7-212. Cession of jurisdiction — Certain property in Fort Smith.

(a) The jurisdiction of the state within and over block number five hundred fourteen (514), in the military reservation addition to the City of Fort Smith, Arkansas, as it is marked and designated by the field notes on file in the mayor's office and known as part of the abandoned military reservation at Fort Smith, donated to the city by the United States by 23 Stat. 19, Ch. 43, is ceded to the United States, so far as the limits of the block shall extend and no further.

(b) The jurisdiction of the State of Arkansas is ceded to the United States over the block of ground situated between Rogers and Parker Avenues and Second and Third Streets, as it is marked and described on the map and plat of the reserve addition to the City of Fort Smith. The ground is a rectangular block three hundred feet (300') by two hundred ninety feet, two and three-quarter inches (290' 2 $\frac{3}{4}$ "), upon which block is located the public buildings known as the United States Jail and Hospital, which block of ground and buildings situated thereon belong to the United States.

(c) The jurisdiction of the State of Arkansas is ceded to the United States over the national cemetery and one hundred feet (100') around the walls of the cemetery, the cemetery being reserved as the property of the United States by 23 Stat. 19, Ch. 43, all of the land being under enclosure.

History. Acts 1889, No. 20, § 1, p. 19; §§ 4556, 4557; Pope's Dig., §§ 5636, 5637; 1903, No. 114, § 1, p. 191; C. & M. Dig., A.S.A. 1947, §§ 10-1118, 10-1119.

22-7-213. Acquisition of land in Pulaski County for military purposes.

(a) The consent of the State of Arkansas is granted to the United States to purchase or acquire real property of not more than one thousand five (1,005) acres in extent in Pulaski County in this state for the purpose of a military post, fort, arsenal, or reservation.

(b) Exclusive jurisdiction over the military post, fort, arsenal, or reservation, and the territory thereof, is ceded to the United States to be exercised so long as it remains the property of the United States.

(c) The State of Arkansas releases and relinquishes its right to tax the site and all improvements thereon, during the time the United States remains the owner thereof, except that this cession of jurisdic-

tion shall not prevent the execution of any process of the state, civil or criminal, on any person who may be on the reservation or premises.

History. Acts 1893, No. 35, §§ 1-3, p. 52; C. & M. Dig., §§ 4561-4563; Pope's Dig., §§ 5641-5643; A.S.A. 1947, §§ 10-1120 — 10-1122.

22-7-214. Hot Springs National Park — Hot Springs Mountain.

(a) Exclusive jurisdiction over that part of the Hot Springs National Park known and described as part of the Hot Springs Mountain, and whose limits are particularly described by the following boundary lines: Commencing at stone monument number seven (7) set upon the west line of Reserve Avenue and marking the boundary line of Hot Springs Mountain, and running thence in a northwesterly direction to a point upon the south line of Fountain Street to a stone monument numbered forty-two (42) and marking the boundary line of Hot Springs Mountain, thence along the south line of Fountain Street to its intersection with Central Avenue or to stone monument number thirty-three (33), thence south along the east line of Central Avenue to where it is intersected by Reserve Avenue at stone monument number thirty (30), thence along the north boundary line of Reserve Avenue to stone monument number seven (7), the point of commencement, all in township two (2) south, range nineteen (19) west, in the County of Garland, State of Arkansas, being a part of the permanent United States Hot Springs Reservation, is ceded to the United States to be exercised so long as it shall remain the property of the United States, except that this cession of jurisdiction shall not prevent the execution of any process of the state, civil or criminal, on any person who may be on the reservation or premises.

(b) The right to tax all structures and other property in private ownership on the Hot Springs National Park accorded the state by 26 Stat. 844, Ch. 533, § 5, is reserved to the State of Arkansas.

History. Acts 1903, No. 30, § 1, p. 52; C. & M. Dig., § 4558; Pope's Dig., § 5638; A.S.A. 1947, § 10-1123.

Publisher's Notes. Although an attempt was made to repeal this section by Acts 1923, No. 407, § 1, p. 854 (Special

Acts), it is doubtful that the attempted repeal could have any effect.

U.S. Code. 26 Stat. 844, Ch. 533, § 5, referred to in this section, is codified as 16 U.S.C. § 365.

CASE NOTES

ANALYSIS

Applicability of state laws.
Taxation.

Applicability of State Laws.

A hotel conducted by a lessee on the Hot Springs Reservation was held subject to a state statute regulating inn keeper's liability to guests. *Williams v. Arlington Hotel Co.*, 15 F.2d 412 (E.D. Ark. 1926), modified on other grounds, 22 F.2d 669 (8th Cir. 1927).

Former massage registration act could not be enforced against massage practitioners operating on premises leased by United States Government at Hot Springs since state lost jurisdiction by virtue of cession to United States. *Ladwig v. Nance*, 223 Ark. 559, 267 S.W.2d 314 (1954).

Taxation.

The state has power to collect income tax from a bath house operated on the Hot Springs Reservation. Superior Bath

House Co. v. McCarroll, 200 Ark. 233, 139 S.W.2d 378 (1940), aff'd, 312 U.S. 177, 61 S. Ct. 503, 85 L. Ed. 721 (1941), overruled on other grounds, Foote's Dixie Dandy, Inc. v. McHenry, 270 Ark. 816, 607 S.W.2d 323 (1980).

22-7-215. Hot Springs National Park — Block 82.

(a) Exclusive jurisdiction over that part of the Hot Springs National Park known and described as block eighty-two (82) on the official plat of the United States Hot Springs Commission is ceded to the United States to be exercised so long as it shall remain the property of the United States, except that this cession of jurisdiction shall not prevent the execution of any process of the state, civil or criminal, on any person who may be in the park or premises.

(b) The right to tax all structures and other property in private ownership on the Hot Springs National Park, accorded the state by 26 Stat. 844, Ch. 533, § 5, is reserved to the State of Arkansas as respects the tract ceded.

History. Acts 1921, No. 56, § 1; Pope's referred to in this section, is codified as 16 Dig., § 5649; A.S.A. 1947, § 10-1124. U.S.C. § 365.

U.S. Code. 26 Stat. 844, Ch. 533, § 5,

22-7-216. Hot Springs National Park — Tourist camps.

(a) Exclusive jurisdiction over that part of the Hot Springs National Park known and described as the automobile tourist camp and whose limits are particularly described by the following boundary lines: Commencing at the stone marking at the northeast corner of the northeast quarter of section thirty-three (33) township two (2) south range nineteen (19) west, thence east for five hundred twenty-eight feet (528') along the south line of the southwest quarter of section twenty-seven (27) township two (2) south range nineteen (19) west, thence north parallel with the reservation line for one thousand three hundred twenty feet (1320') to the north line of the southwest quarter of the southwest quarter of section twenty-seven (27) township two (2) south range nineteen (19) west, thence west for five hundred twenty-eight feet (528') along the north line of the southwest quarter of the southwest quarter of section twenty-seven (27) township two (2) south range nineteen (19) west to the east line of Hot Springs National Park, thence south along the line of Hot Springs National Park to the place of beginning, in the County of Garland, State of Arkansas, being a part of the permanent United States Hot Springs Reservation, is ceded to the United States to be exercised so long as it remains the property of the United States, except that this cession of jurisdiction shall not prevent the execution of any process of the state, civil or criminal, on any person who may be on the reservation or premises.

(b) The right to tax all structures and other property in private ownership on the Hot Springs National Park, accorded the state by 26 Stat. 844, Ch. 533, § 5, is reserved to the State of Arkansas.

History. Acts 1925, No. 231, § 1; Pope's Dig., § 5650; A.S.A. 1947, § 10-1125.

U.S. Code. 26 Stat. 844, Ch. 533, § 5, referred to in this section, is codified as 16 U.S.C. § 365.

22-7-217. Hot Springs National Park — Land not previously ceded.

(a) Exclusive jurisdiction over all lands which are or shall be included in the Hot Springs National Park in the State of Arkansas and which have not previously been included in acts of the General Assembly is ceded to the United States to be exercised so long as the lands remain the property of the United States, except that this cession of jurisdiction shall not prevent the execution of any process of the state, civil or criminal, on any person who may be in the park or on park premises.

(b) The right to tax all structures and other property in private ownership on the Hot Springs National Park is reserved to the State of Arkansas.

History. Acts 1933, No. 166, § 1; Pope's Dig., § 5651; A.S.A. 1947, § 10-1126.

22-7-218 — 22-7-220. [Repealed.]

Publisher's Notes. Acts 1991, No. 343, § 11, provided: "The Pea Ridge National Park Commission created under Arkansas Code § 22-7-218 is abolished."

These sections, concerning the Pea Ridge National Park Commission, were

repealed by Acts 1991, No. 343, § 11. The sections were derived from the following sources:

22-7-218. Acts 1957, No. 192, §§ 1-3.

22-7-219. Acts 1957, No. 192, § 4.

22-7-220. Acts 1957, No. 192, §§ 5, 6.

22-7-221. Lands necessary to Ouachita River Navigation Project.

(a) The State of Arkansas or any agency or institution of the state having jurisdiction or authority over lands held in the name of the State of Arkansas, which lands are necessary or desirable in the furtherance of the Ouachita River Navigation Project and any wildlife refuge established in connection with the project, is authorized to give, donate, or otherwise transfer the lands, any portion thereof, or any interest therein to the federal government for such use.

(b) Any county holding title to lands which are necessary or desirable for use in developing the project and any national wildlife refuge established in connection with the project is authorized to give, donate, or otherwise transfer the lands, any portion thereof, or any interest therein to the federal government for use in connection with the project or any national wildlife refuge established in connection with the project.

History. Acts 1975, No. 122, §§ 1, 2; A.S.A. 1947, §§ 10-1130, 10-1131.

22-7-222. Concurrent jurisdiction — Certain tract in Camp Robinson.

(a) The State of Arkansas accepts relinquishment by the United States to the State of Arkansas of such legislative jurisdiction as will enable the State of Arkansas and its political subdivisions to exercise, concurrently with the United States, law enforcement powers on a tract of land located in Pulaski County, Arkansas, being the same land excepted from the August 25, 1950, deed from the United States to the State of Arkansas covering Camp Robinson and being further described as Block Fifteen (15), bounded by Military Road, Dakota Avenue, 3rd Place, and the Missouri Pacific track, containing thirty-one and five-tenths (31.5) acres, more or less.

(b) The Governor is authorized to take appropriate necessary steps, as described in § 22-7-102, to accomplish the transfer of the legislative jurisdiction referred to in subsection (a) of this section.

History. Acts 1983, No. 239, §§ 1, 2;
A.S.A. 1947, §§ 10-1132, 10-1133.

Cross References. Camp Joseph T.
Robinson, § 12-63-401 et seq.

22-7-223. Concurrent jurisdiction — Department of Veterans Affairs Medical Centers, Arkansas Post National Memorial, Buffalo National River, Fort Smith National Historic Site, Pea Ridge National Military Park.

(a) The State of Arkansas accepts relinquishment by the United States to the State of Arkansas of such legislative jurisdiction as will enable the State of Arkansas and its political subdivisions to exercise, concurrently with the United States, law enforcement powers on:

(1) All lands comprising the Department of Veterans Affairs Medical Center at Little Rock, situated in Pulaski County and described as follows:

From a corner common to sections 10, 11, 15, and 14, in Township 1 North, Range 12 West; thence, North 0° 55' East, along the section line between sections 10 and 11, a distance of 31.4 feet to the point of beginning, being also the northeasterly corner of the intersection of Roosevelt Road and Cumberland Street, as established by amended plat, dated July, 1906, and recorded in book 81, page 209; thence, North 0° 55' East, and following the easterly line of Cumberland Street, a distance of 164.1 feet to a point; thence, North 88° 44' West, a distance of 186 feet to a point; thence, North 0° 55' East, a distance of 30 feet, to a point on the northerly line of East 25th Street; thence, westerly, along the northerly line of East 25th Street, a distance of 66.1 feet to the southwesterly corner of lot 7, block 2, in subdivision of block 18, Rapley Estate; thence northerly along the westerly lines of lots 7, 8, 9, 10, 11, and 12, block 2 in subdivision of block 18, Rapley Estate and continuing across East 24th Street and along the westerly lines of lots 9 and 10, block 2 in Fulk's Subdivision of lots 14, 15, and 16, Rapley Estate; a distance of 456.2 feet to the northwesterly corner of lot 10, block 2, in

Fulk's Subdivision of lots 14, 15, and 16, Rapley Estate; thence easterly along the northerly line of lot 10 and continuing across Cumberland Street and along the northerly line of lot 7, block 3, in Fulk's Subdivision of lots 14, 15, and 16, Rapley Estate, a distance of 360 feet to the northeasterly corner of lot 7, block 3, in Fulk's Subdivision of lots 14, 15, and 16, Rapley Estate; thence southerly, along the easterly lines of lots 7 and 8, block 3, in Fulk's Subdivision of lots 14, 15, and 16, Rapley Estate, and continuing across East 24th Street, a distance of 157 feet to a point in the southerly line of East 24th Street; thence easterly along the southerly line of East 24th Street a distance of 992 feet to a point where the southerly line of East 24th Street intersects the Quapaw Line, being also the northeasterly corner of lot 10, block 4, in Van Frank's Subdivision of Rapley Estate; thence southerly and along the Quapaw Line, a distance of 506.9 feet to a point in the northerly line of Roosevelt Road, being also the southeasterly corner of lot 10, block 3, in Van Frank's Subdivision of Rapley Estate; thence westerly along the northerly line of Roosevelt Road a distance of 1117.5 feet, more or less, to the point of beginning, containing approximately 16 acres, all in the City of Little Rock, County of Pulaski, State of Arkansas.

(2) All lands comprising the Department of Veterans Affairs Medical Center at North Little Rock, situated in Pulaski County and described as follows:

Parcel 1 being part of the NE, NW, SE, and SW Quarters of Section 28, Township 2 North, Range 12 West, more particularly described as follows:

Beginning at a point which is the northwest corner of the NE Quarter of the SE Quarter of Section 28; thence S 0° 11' 04" W 981.56 feet; thence S 35° 30' 04" W 100.22 feet; thence S 57° 23' 21" W 136.21 feet; thence S 58° 58' 02" W 121.20 feet; thence S 68° 25' 24" W 119.38 feet; thence S 72° 27' 14" W 135.97 feet; thence S 80° 38' 09" W 113.39 feet; thence S 85° 07' 33" W 159.12 feet; thence S 87° 13' 04" W 1264.49 feet; thence N 36° 16' 05" W 97.55 feet; thence N 0° 35' 35" 121.44 feet; thence N 30° 54' 05" W 78.84 feet; thence N 44° 30' 05" W 170.25 feet; thence N 60° 25' 40" W 158.23 feet; thence N 31° 27' 30" W 173.57 feet; thence N 73° 57' 05" W 107.65 feet; thence N 47° 51' 25" W 100.35 feet; thence N 32° 17' 55" W 175.65 feet; thence N 62° 04' 45" E 769.14 feet; thence N 23° 29' 45" W 890.84 feet; thence N 23° 04' 05" W 745.75 feet; thence N 64° 40' 45" E 947.57 feet; thence N 64° 25' 15" E 656.26 feet; thence N 80° 21' 41" E 550.77 feet; thence N 81° 16' 08" E 744.90 feet; thence S 0° 06' 10" E 2240.70 feet to the point of beginning.

Parcel 2 being part of the SE Quarter of the SW Quarter of Section 21 and the NE Quarter of the NW Quarter of Section 28, Township 2 North, Range 12 West, more particularly described as follows:

Commencing at the southwest corner of the SW Quarter of Section 21; thence N 0° 34' 04" E 901.45 feet; thence S 89° 29' 00" E 1958.51 feet; thence S 0° 31' 28" W 89.58 feet to the point of beginning of the tract of land herein described; thence N 72° 47' 50" E 84.85 feet; thence S 32° 00' 02" E 626.46 feet; thence S 58° 00' 46" W 385.43 feet; thence

N 34° 21' 09" W 184.39 feet; thence S 32° 36' 39" W 394.91 feet; thence N 54° 30' 01" W 30.75 feet; thence N 32° 89' 49" E 406.79 feet; thence N 34° 21' 09" W 355.17 feet; thence N 43° 13' 24" E 250.00 feet; thence N 50° 38' 54" E 86.14 feet to the point of beginning.

Parcel 3, being part of the SW Quarter of Section 28, Township 2 North, Range 12 West, more particularly described as follows:

Commencing at the northwest corner of the NE Quarter of the SE Quarter of Section 28; thence S 88° 36' 09" E 660.61 feet; thence S 0° 05' 13" W 942.20 feet; thence S 60° 05' 13" W 82.80 feet; thence S 44° 53' 13" W 270.10 feet; thence S 55° 20' 13" W 211.10 feet; thence N 87° 08' 08" W 222.13 feet; thence S 0° 0' 0' 679.57 feet; thence S 83° 44' 50" W 660.00 feet; thence S 89° 44' 39" W 878.01 feet to the point of beginning of the tract of land herein described; thence S 10° 31' 08" W 54.83 feet; thence N 63° 21' 29" W 86.75 feet; thence N 41° 48' 08" W 22.56 feet; thence N 86° 24' 20" W 92.90 feet; thence N 06° 20' 18" E 175.52 feet; thence S 79° 28' 52" E 211.18 feet; thence S 10° 31' 08" W 146.31 feet to the point of beginning.

(3) All lands comprising the Department of Veterans Affairs Medical Center at Fayetteville, situated in Washington County and described as follows:

A part of the E½ of the NE¼ of Section 9 T-16-N, R-30-W, and a part of the W½ of the NW¼ of Section 10, T-16-N, R-30-W of the 5th Principal Meridian, beginning at a point on the West line of the SE¼ of the NE¼ of Section 9 which is N 0° 13' W 755.25 feet from the SW corner of the 40 Acre tract, thence N with the West line 1124.74', thence East 1168', thence South 383', thence East 339' more or less to the West Right-of-Way line of U.S. Highway 71, thence S 01° 51' W 1147.60' with the Right-of-Way, thence West 702.37', thence S 50° 18' W 165.55', thence West 365.42', thence N 0° 13' W 505.26', and thence West 225' to the point of beginning, situated in Washington County and containing 46.72 acres, more or less.

(4) All lands comprising the Arkansas Post National Memorial, the Buffalo National River, the Fort Smith National Historic Site, and the Pea Ridge National Military Park.

(b) The Governor is authorized to take appropriate necessary steps, as described in § 22-7-102, to accomplish the transfer of legislative jurisdiction referred to in subsection (a) of this section.

History. Acts 1983, No. 876, §§ 1, 2;
A.S.A. 1947, §§ 10-1134, 10-1135.

22-7-224. Donation of real property to Department of Veterans Affairs.

(a)(1) It is the intent of this section to permit the securing of payment from the United States Department of Veterans Affairs to the State of Arkansas and the Department of Human Services State Institutional System Board for the fair replacement value of all existing improve-

ments to lands authorized to be transferred in subsection (b) of this section.

(2) It is further intended that funds received for all improvements on lands transferred by subsection (b) of this section shall be used for the constructing and equipping of a new psychiatric nursing home at the Arkansas Health Center and associated costs.

(b)(1) The Department of Human Services State Institutional System Board and the Board of Trustees of the University of Arkansas shall have the authority to donate any real property under their control and supervision to the United States Department of Veterans Affairs for the construction by the United States Department of Veterans Affairs of a United States Department of Veterans Affairs hospital and related facilities on the donated land.

(2) The donation may be accomplished notwithstanding the provisions of §§ 22-6-601 and 22-7-102(a)-(d).

History. Acts 1977 (Ex. Sess.), No. 21, §§ 1, 2; 1979, No. 1111, § 1; 1979, No. 1114, § 1; A.S.A. 1947, §§ 10-1127.1, 10-1127.2; Acts 2001, No. 152, § 3.

Amendments. The 2001 amendment, in (a)(2), deleted "and the associated

costs" preceding "of a new psychiatric," substituted "Arkansas Health Center" for "Benton Services Center," added "and associated costs," and made minor stylistic changes.

22-7-225. Federal relinquishment of exclusive legislative jurisdiction pertaining to the administration of criminal laws.

(a) The consent of the state is hereby given to accept the relinquishment by the United States of exclusive legislative jurisdiction only as to the administration of criminal laws insofar as said assignment affects the following described tracts of real property situated in the State of Arkansas, to wit:

(1) Henry R. Koen Forest Service Building, 605 W. Main Street, Russellville, Arkansas, the same being all of Block "B" in S. M. Shinn's Addition and all of Block 41 in Mary A. Russell's Addition to the City of Russellville, Pope County, Arkansas, more particularly described as follows: Beginning at a point on Section line approximately 85 feet more or less West of SE corner of Section 5, Township 7 North, Range 20 West. Also, being the SE corner of said Block 41 Mary A. Russell's Addition and the NE corner of said Block "B" S. M. Shinn's Addition, and on the West line of South Fargo Avenue; thence in a southerly direction with the west line of Fargo Avenue 130 feet more or less to the North line of 2nd Court Street; thence in a westernly direction with the North line of 2nd Court Street to the East line of South Glenwood Avenue being 167 feet more or less; thence in a northernly direction with the East line of Glenwood Avenue 365 feet more or less to the South line of West Main Street; thence in an easternly direction with the South line of West Main Street to the West line of South Fargo Avenue, being 240 feet more or less; thence in a southerly direction with

the West line of South Fargo Avenue 160 feet more or less to the point of beginning;

(2) Federal Office Building, 115 South Denver St., Russellville, Arkansas, the same being all of Lots Seven (7), Eight (8), and Nine (9) in Block "F" J. M. Shinn's Addition to the City of Russellville, County of Pope, State of Arkansas, the same being a parcel of land facing one hundred twenty (120) feet on River Street, and one hundred twenty (120) feet on David Street;

(3) U. S. Post Office/Court, 600 West Capitol Street, Little Rock, Arkansas, the same being Lots 1-12 inclusive, Block 126, of the City of Little Rock, County of Pulaski, State of Arkansas, according to recorded plan thereof;

(4) U. S. Post Office/Court, 5th and State Line Ave., Texarkana, Arkansas, the same being all of Fractional Block No. Twenty-nine (29), Original City of Texarkana, County of Miller, State of Arkansas, as same appears upon the map and plat of said town made and recorded by the Cairo and Fulton R. R. Company;

(5) Federal Office Building, 120 North Broadway, Blytheville, Arkansas, the same being all of Lots Nos. 4, 5 and 6, in Block 5, Davis Addition to the City of Blytheville, in Mississippi County, Arkansas, the entire three lots composing a plot of ground 150 feet by 140 feet;

(6) Federal Office Building, 123 N. Main Street, Benton, Arkansas, the same being all of Lots numbered Two (2) and Three (3), in Block numbered Eleven (11), in the Original Town (now City) of Benton, County of Saline, State of Arkansas, as per plat thereof dated June 25, 1836, and duly recorded among the land records in and for the County and State, aforesaid, and taken together forming one (1) tract or parcel of land contained within the following metes and bounds, namely: Beginning for the same at the point of intersection of the East Line of Main Street (80 feet wide) with the South line of Sevier Street (80 feet wide), where is set a concrete monument six inches by six inches by three feet, and running thence along the South line of Sevier Street, East one hundred fifty (150) feet to the Northeast corner of said Lot Two (2); thence along the rear lines of both lots, South one hundred (100) feet to a similar monument set at the Southeast corner of said Lot Three (3); thence along the South line of Lot Three (3), West one hundred fifty (150) feet to another concrete monument, six inches by six inches by three feet, set at the Southwest corner of Lot Three (3); and thence along the West lines of the Lots, Two (2) and Three (3), and the East line of Main Street, aforesaid, North one hundred (100) feet to the point of beginning; also any and all of the right, title and interest of the party grantor in and to all streets, roads, avenues, alleys, alley-ways and rights-of-way abutting, or in anywise appertaining to, the land above described.

(7) U. S. Post Office/Court, 30 South 6th Street, Fort Smith, Arkansas, the same being all of Block 514 of Reserve Addition to the City of Fort Smith, Sebastian County, Arkansas, as established by Special Deed filed March 24, 1885, in Deed Record "N", Page 618, and by a plat

prepared by George H. Lyman, civil engineer, which is on file in the General Land Office of the United States and approved by the Secretary of the Interior, Secretary of the Treasury, and Secretary of War on November 8, 1884, November 13, 1884, and February 2, 1885, respectively, and more particularly described as follows: Beginning at the westernmost corner of said Block 514 at the intersection of the northerly line of Parker Avenue and the easterly line of South 5th Street; thence North 39° 00' East, 300.00 feet along said easterly line of South 5th Street to an intersection with the southerly line of Rogers Avenue; thence along said southerly line South 51° 00' East, 308.12 feet to the westerly line of South 6th Street; thence South 39° 00' West, 300.00 feet along said westerly line to the northerly line of Parker Avenue; thence North 51° 00' West, 308.12 feet to the point of beginning. Containing 92,436.00 square feet.

(b) The right of the State of Arkansas to exercise jurisdiction to administer criminal laws over the real property described in subsection (a) of this section, shall be without prejudice of the right of the United States to exercise such concurrent legislative jurisdiction to administer criminal laws as may be vested in or retained by it over said real property.

(c) Except as provided in subsections (a) and (b) of this section, the United States shall continue to retain and exercise exclusive legislative jurisdiction over the real property described above for all other purposes.

History. Acts 1991, No. 963, §§ 1-3.

22-7-226. Cession of concurrent jurisdiction — Federal prisons.

The State of Arkansas hereby cedes concurrent jurisdiction to the United States over the lands, waters, and buildings previously or hereinafter acquired for the Federal Bureau of Prisons, Federal Correctional Institution in Forrest City, St. Francis County, Arkansas, and over all future lands, waters, and buildings hereafter acquired, leased, or occupied, whether by purchase, condemnation, or otherwise, by or on behalf of the United States for the Federal Bureau of Prisons.

History. Acts 1997, No. 215, § 1.

22-7-227. Acceptance of jurisdiction by the United States.

Cession of jurisdiction pursuant to § 22-7-226 above shall take effect only upon acceptance of such jurisdiction by the United States. Federal jurisdiction so ceded shall end as to any such lands, waters, or buildings, or portions thereof, that cease to be owned, leased, or occupied by or on behalf of the United States.

History. Acts 1997, No. 215, § 2.

22-7-228. Cession of concurrent jurisdiction — Little Rock.

The State of Arkansas hereby cedes concurrent jurisdiction to the United States over the lands, waters, and buildings previously or hereinafter acquired for the Oscar Finkbeiner Army Reserve Center in the City of Little Rock, Pulaski County, Arkansas, and over all future lands, waters, and buildings hereafter acquired, leased, or occupied, whether by purchase, condemnation, or otherwise, by or on behalf of the United States for the Oscar Finkbeiner Army Reserve Center.

History. Acts 2001, No. 1479, § 1.

22-7-229. Cession of concurrent jurisdiction — Hot Springs.

The State of Arkansas hereby cedes concurrent jurisdiction to the United States over the lands, waters, and buildings previously or hereinafter acquired for the United States Army Reserve Center in the City of Hot Springs, Garland County, Arkansas, and over all future lands, waters, and buildings hereafter acquired, leased, or occupied, whether by purchase, condemnation, or otherwise, by or on behalf of the United States for the United States Army Reserve Center.

History. Acts 2001, No. 1479, § 2.

22-7-230. Acceptance by the United States.

Cession of jurisdiction pursuant to §§ 22-7-228 and 22-7-229 shall take effect only upon acceptance of such jurisdiction by the United States. Federal jurisdiction so ceded shall end as to any such lands, waters, or buildings, or portions thereof, that cease to be owned, leased, or occupied by or on behalf of the United States.

History. Acts 2001, No. 1479, § 3.

SUBCHAPTER 3 — FORT CHAFFEE

SECTION.

- 22-7-301. Exclusive jurisdiction over Fort Chaffee.
- 22-7-302. Concurrent jurisdiction over Fort Chaffee.
- 22-7-303. Description of land.

SECTION.

- 22-7-304. Resolution of discrepancies in description of land.
- 22-7-305. Filing requirement.
- 22-7-306. Construction of subchapter.

Effective Dates. Acts 1997, No. 1260, § 10: Apr. 9, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the immediate legal control and supervision of all portions of Fort Chaffee is of utmost importance in preserving and securing government property therein and that accepting title to Fort Chaffee

from the federal government is necessary for the training and maintaining of the Arkansas National Guard as an integral part of the defense of this state and of the United States. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its ap-

proval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the

Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

22-7-301. Exclusive jurisdiction over Fort Chaffee.

The General Assembly finds that pursuant to 10 U.S.C. § 2683, the Secretary of the Army, acting by and through his or her duly authorized Deputy Assistant Secretary of the Army, has caused a proper and lawful notice to be filed with the Governor relinquishing such legislative jurisdiction as necessary from the United States to the State of Arkansas in order that the State of Arkansas may exercise concurrent jurisdiction over Fort Chaffee, Arkansas, until October 1, 1997, and relinquishing all legislative jurisdiction from the United States in order that the State of Arkansas may exercise exclusive legislative jurisdiction over Fort Chaffee from and after October 1, 1997.

History. Acts 1997, No. 1260, § 1.

22-7-302. Concurrent jurisdiction over Fort Chaffee.

The State of Arkansas hereby accepts concurrent legislative jurisdiction with the United States of America of the following described real property known as Fort Chaffee, Arkansas, from April 9, 1997, until the beginning of the first day of October 1997, and furthermore accepts exclusive legislative jurisdiction from the United States of the following described real property known as Fort Chaffee, Arkansas, from and after the first day of October 1997, and thereafter.

The lands comprising Fort Chaffee, Arkansas, owned by or otherwise heretofore subject to the exclusive legislative jurisdiction of the United States in:

Sections 19, 30, and 31, of Township 8 North, Range 30 West;

Sections 23 — 28 inclusive, and 33 — 36 inclusive of Township 8 North, Range 31 West;

Sections 18, 19, 30, and 31 of Township 7 North, Range 28 West;

Sections 7, 8, 9, and 13 — 36 inclusive of Township 7 North, Range 29 West;

Sections 3 — 36 inclusive of Township 7 North, Range 30 West;

Sections 1 — 29 inclusive and Sections 35 and 36 of Township 7 North, Range 31 West;

Sections 1, 2, and 11 — 14 inclusive of Township 7 North, Range 32 West;

Sections 6 and 7 of Township 6 North, Range 28 West;

Sections 1 — 24 inclusive of Township 6 North, Range 29 West;

Sections 1 — 6 inclusive, Sections 10 — 15 inclusive, and Sections 22 — 24 inclusive of Township 6 North, Range 30 West; and

Sections 1 and 2, Township 6 North, Range 31 West, respectively located in Logan, Sebastian, Franklin, and Crawford Counties, Arkan-

sas, and more accurately described and identified in accordance with § 22-7-102 as follows:

(a) The Highway 96 Right of Way in the Fort Chaffee U.S. Army Military Reservation, the same being a strip of Right of Way 80 feet in width and approximately 26,730.0 feet in length, situated in the County of Sebastian, State of Arkansas, being a part of sections 9, 16, 21, 28, 33, and 32, Township 7 North, Range 30 West of the 5th Principal Meridian, and containing 49.10 acres, more or less.

(b) The Highway 22 Right of Way in the Fort Chaffee U.S. Army Military Reservation, the same being all of six (6) tracts or parcels of land contained within the following metes and bounds, namely:

(1) Parcel No. 1, 36.50 acres: A tract of land situated in the County of Sebastian, State of Arkansas, being part of Sections Nos. 3, 2, & 1, Township 7 North, Range 31 West of the 5th Principal Meridian, and being more particularly described as follows:

From the corner common to Sections Nos. 3 & 4 of said Township 7 North and Sections Nos. 33 and 34 of Township 8 North, Range 31 West, situated in a Westerly boundary line for Fort Chaffee, along the common line between said Sections Nos. 3 & 4, same being a Westerly boundary line for said Fort Chaffee, South $00^{\circ}25'$ East, 745 feet, more or less to the point of beginning, said point of beginning being the intersection of said Westerly boundary line for Fort Chaffee with the Northerly Right of Way line for the relocation of State Highway No. 22 and being located 60 feet Northeasterly of and perpendicular distance from the centerline for said relocation;

Thence along the Northerly Right of Way line for said relocation of Highway No. 22 as follows: 60 feet Northeasterly of and concentric to the arc of a $01^{\circ}00'$ curve on said centerline (radius = 5729.65 feet; tangent distance = 325.2 feet; central angle = $00^{\circ}31'$) along a curve to the left 515 feet, more or less to a point 60 feet Northeasterly of and perpendicular distance from P. T. Sta. 345+58.10 on the centerline for said relocation;

Thence 60 feet Northeasterly of and parallel to said centerline South $69^{\circ}05'$ East, 698.4 feet to a point 60 feet Northeasterly of and perpendicular distance from P. C. Sta. 354+56.5 feet on the centerline for said relocation;

Thence 60 feet Northeasterly of and concentric to the arc of a $03^{\circ}00'$ curve on said centerline (radius = 1910.08 feet; tangent distance = 213.1 feet; central angle = $12^{\circ}44'$) along a curve to the right 316.19 feet to a point 60 feet Northeasterly of and perpendicular distance from Sta. 357+65 on the centerline for said relocation, said point being the intersection of the Northerly Right of Way line for the relocation of said Highway No. 22 with the existing Northerly Right of Way line for Highway No. 22;

Thence departing from the Northerly Right of Way line for said relocation along the existing Northerly Right of Way line for said Highway No. 22 in a general Southeasterly direction approximately 1686 feet to a point in the Southerly Right of Way line for the

Missouri Pacific Railroad, said point being located 50 feet Southwesterly of and perpendicular distance from the centerline for said Missouri Pacific Railroad;

Thence along the Southerly Right of Way line for said Missouri Pacific Railroad, 50 feet Southwesterly of and parallel to the centerline for said Missouri Pacific Railroad, South $77^{\circ}50'$ East, 25 feet, more or less to a point for the intersection of the Southerly Right of Way line for said Missouri Pacific Railroad with the Northerly Right of Way line for the relocation of said Highway No. 22 and being located 60 feet Northeasterly of and perpendicular distance from Sta. 374+10 of the centerline for said relocation;

Thence along the Northerly Right of Way line for said relocation as follows: 60 feet Northeasterly of and parallel to the centerline for said relocation, South $56^{\circ}21'$ East, 8.6 feet to a point 60 feet Northeasterly of and perpendicular distance from P. C. Sta. 374+18.6 on the centerline for said relocation;

Thence 60 feet Northeasterly of and concentric to the arc of a $06^{\circ}00'$ curve on said centerline (radius = 955.37 feet; tangent distance = 214.0 feet; central angle = $25^{\circ}16'$) along a curve to the left, 394.65 feet to a point 60 feet Northerly of and perpendicular distance from P. T. Sta. 378+39.7 back, Sta. 379+49.2 ahead on the centerline for said relocation;

Thence 60 feet Northerly of and parallel to said centerline, South $81^{\circ}37'$ east 1440.80 feet to a point 60 feet Northerly of and perpendicular distance from Sta. 393+90 on the centerline for said relocation;

Thence South $78^{\circ}49'$ East, 510.61 feet to a point 35 feet Northerly of and perpendicular distance from Sta. 399+00 on the centerline for said relocation, said point also being situated in the existing Northerly Right of Way line for said Highway No. 22;

Thence departing from the Northerly Right of Way line for said relocation of Highway No. 22, along the existing Northerly Right of Way line for said Highway No. 22, 35 feet Northeasterly of and parallel to said centerline South $81^{\circ}25'$ East, 400 feet, more or less, to a point 35 feet Northeasterly of and perpendicular distance from said centerline, said point being the intersection of said existing Northerly Right of Way line with the Northerly Right of Way line for said relocation;

Thence along the Northerly Right of Way line for said relocation as follows: perpendicular to said centerline North $08^{\circ}35'$ East 25 feet to a point 60 feet Northeasterly of and perpendicular distance from the centerline for said relocation;

Thence 60 feet Northeasterly of and parallel to said centerline, South $81^{\circ}25'$ East, 1203 feet more or less to a point 60 feet Northerly of and perpendicular distance from P. C. Sta. 415+03.4 on said centerline;

Thence 60 feet Northerly of and concentric to the arc of a $03^{\circ}00'$ curve on said centerline (radius = 1910.08 feet; tangent distance =

326.5 feet; central angle = $19^{\circ}24'$) along a curve to the left, 626.39 feet to a point 60 feet Northerly of and perpendicular distance from P. T. Sta. 421+50.1 on said centerline;

Thence 60 feet Northerly of and parallel to said centerline North $79^{\circ}11'$ East, 2466.5 feet to a point 60 feet Northwesterly of and perpendicular distance from P. C. Sta. 446+16.6 on said centerline;

Thence 60 feet Northerly of and concentric to the arc of a $01^{\circ}00'$ curve on said centerline (radius = 5729.65 feet; tangent distance = 118.4 feet; central angle $02^{\circ}22'$) along a curve to the left, 234.22 feet to a point 60 feet Northerly of and perpendicular distance from P. T. Sta. 448+53.3 on said centerline;

Thence 60 feet Northerly of and parallel to said centerline, North $76^{\circ}49'$ East, 1474.81 feet to a point in an Easterly boundary line for said Fort Chaffee;

Thence departing from the Northerly Right of Way line for said relocation along said Easterly boundary line for Fort Chaffee, South 123.25 feet to a point 60 feet Southerly of and perpendicular distance from the centerline for said relocation;

Thence along the Southerly Right of Way line for said relocation as follows: 60 feet Southerly of and parallel to said centerline line South $76^{\circ}49'$ West, 1446.70 feet to a point 60 feet Southerly of and perpendicular distance from P. T. Sta. 448+53.3 on said centerline;

Thence 60 feet Southerly of and concentric to the arc of a $01^{\circ}00'$ curve on said centerline (radius = 5729.65 feet; tangent distance = 118.4 feet; central angle = $02^{\circ}22'$) along a curve to the right 239.18 feet to a point 60 feet Southerly of and perpendicular distance from P. C. Sta. 446+16.6 on said centerline;

Thence 60 feet Southerly of and parallel to said centerline South $79^{\circ}11'$ West, 2468.5 feet to a point 60 feet Southerly of and perpendicular distance from P. T. Sta. 421+50.1 on said centerline;

Thence 60 feet Southerly of and concentric to the arc of a $03^{\circ}00'$ curve on said centerline (radius = 1910.08 feet; tangent distance = 326.5 feet; central angle = $19^{\circ}24'$) along a curve to the right, 667.0 feet to a point 60 feet Southerly of and perpendicular distance from P. C. Sta. 415+03.4 on said centerline;

Thence 60 feet Southwesterly of and parallel to said centerline North $81^{\circ}25'$ West, 1603.4 feet to a point 60 feet Southerly of and perpendicular distance from Sta. 399+00 on said centerline;

Thence perpendicular to said centerline North $08^{\circ}35'$ East, 25 feet to a point 35 feet Southwesterly of and perpendicular distance from said centerline, said point being the intersection of the Southerly Right of Way line for said relocation, with the existing Southerly Right of Way line for said Highway No. 22;

Thence departing from the Southerly Right of Way line for said relocation, along the existing Southerly Right of Way line for said Highway No. 22, North $81^{\circ}37'$ West, 3183.04 feet to a point 60 feet Southwesterly of and perpendicular distance from Sta. 376+25 on the centerline for said relocation, said point also being the intersection of

said existing Southerly Right of Way line with the Southerly Right of Way line for said relocation;

Thence along the Southerly Right of Way line for said relocation as follows: 60 feet Southwesterly of and concentric to the arc of a $06^{\circ}00'$ curve on said centerline (radius = 955.37 feet; tangent distance = 214.00 feet; central angle = $25^{\circ}16'$) along a curve to the right 219.36 feet to a point 60 feet Southwesterly of and perpendicular distance from P. C. Sta. 374+18.6 on said centerline;

Thence 60 feet Southwesterly of and parallel to said centerline North $56^{\circ}21'$ West, 1537.7 feet to a point 60 feet Southwesterly of and perpendicular distance from P. T. Sta. 358+80.9 on said centerline;

Thence 60 feet Southwesterly of and concentric to the arc of a $03^{\circ}00'$ curve on said centerline (radius = 1910.08 feet; tangent distance = 213.1 feet; central angle = $12^{\circ}44'$) along a curve to the left 411.07 feet to a point 60 feet Southwesterly of and perpendicular distance from P. C. Sta. 354+56.5 on said centerline;

Thence 60 feet Southwesterly of and parallel to said centerline, North $69^{\circ}05'$ West, 658.4 feet to a point to a point 60 feet Southwesterly of and perpendicular distance from P. T. Sta. 345+58.1 on said centerline;

Thence 60 feet Southwesterly of and concentric to the arc of a $01^{\circ}00'$ curve on said centerline (radius = 5729.65 feet; tangent distance = 326.2 feet; central angle = $06^{\circ}31'$) along a curve to the right 465 feet, more or less, to a point in a Westerly boundary line for said Fort Chaffee, same being the common line between said Sections Nos. 3 & 4 of said Township 7 North, Range 31 West;

Thence departing from the Southerly Right of Way line for said relocation, along said common section line, same being a Westerly boundary line for said Fort Chaffee, North $00^{\circ}28'$ West, 135 feet, more or less to the point of beginning, containing 36.50 acres, more or less.

(2) Parcel No. 2, 10.28 acres: A tract of land situated in the County of Sebastian, State of Arkansas, being part of Section No. 5, Township 7 North, Range 30 West of the 5th Principal Meridian and being more particularly described as follows:

From the Northwest corner of the NW $\frac{1}{4}$ of Section 5 same being the corner common to Sections Nos. 5 & 6, Township 7 North, Range 30 West, along the common line between said Sections Nos. 5 & 6 South 1518 feet, more or less to the point of beginning, said point of beginning being the intersection of a Northwest corner for said Fort Chaffee with the Northerly Right of Way line for the relocation of State Highway No. 22 and being located 60 feet Northeasterly of and perpendicular distance from the centerline for said relocation;

Thence along the Northerly Right of Way line for said relocation, same being a Northerly boundary line for said Fort Chaffee as follows: 60 feet Northeasterly of and parallel to said centerline South $68^{\circ}01'$ East, 361 feet, more or less to a point 60 feet Northeasterly of and perpendicular distance from P. C. Sta. 574+21.8 on said centerline;

Thence 60 feet Northeasterly of and concentric to the arc of a $02^{\circ}00'$ curve on said centerline (radius = 2864.93 feet; tangent distance = 321.00 feet; central angle = $12^{\circ}47'$) along a curve to the left, 424.91 feet to a point for the intersection of the Northerly Right of Way line for said relocation, with the existing Northerly Right of Way line for said Highway No. 22 and being located 60 feet Northeasterly of and perpendicular distance from Sta. 578+55.6 on the centerline for said relocation;

Thence departing from the Northerly Right of Way line for said relocation, along the existing Northerly Right of Way line as follows: perpendicular to said centerline North $13^{\circ}18'$ East, 15 feet to a point 75 feet Northeasterly of and perpendicular distance from Sta. 572+55.8 on said centerline;

Thence 75 feet Northeasterly of and concentric to the arc of a $02^{\circ}00'$ curve on said centerline (radius = 2864.93 feet; tangent distance 361.00 feet; central angle = $12^{\circ}47'$) along a curve to the left, 199.83 feet to a point 75 feet Northeasterly of and perpendicular distance from P. T. Sta. 580+61 on the centerline for said relocation;

Thence 75 feet Northeasterly of and parallel to said centerline, South $80^{\circ}48'$ East, 439 feet to a point for the intersection of said existing Northerly Right of Way line with the Northerly Right of Way line for said relocation and being located 75 feet Northeasterly of and perpendicular distance from Sta. 585+00 on said centerline;

Thence departing from said existing Northerly Right of Way line, along the Northerly Right of Way line for said relocation as follows: perpendicular to said centerline North $09^{\circ}12'$ East, 15 feet to a point 90 feet Northeasterly of and perpendicular distance from Sta. 585+00 on said centerline;

Thence 90 feet Northeasterly of and parallel to said centerline, South $80^{\circ}48'$ East, 400 feet to a point 90 feet Northeasterly of and perpendicular distance from Sta. 589+00 on said centerline;

Thence perpendicular to said centerline, North $09^{\circ}12'$ East, 35 feet to a point 125 feet Northeasterly of and perpendicular distance from Sta. 589+00 on said centerline;

Thence 125 feet Northeasterly of and parallel to said centerline, South $80^{\circ}48'$ East, 855 feet, more or less, to a point for a Northeast corner for said Fort Chaffee and being located 125 feet Northeasterly of and perpendicular distance from said centerline;

Thence departing from said Northerly Right of Way line along said Easterly boundary line for said Fort Chaffee, South 202.61 feet to a point in the existing Southerly Right of Way line for said Highway No. 22 and being located 75 feet Southwesterly of and perpendicular distance from the centerline for said relocation;

Thence departing from the boundary line for said Fort Chaffee along said existing Southerly Right of Way line, 75 feet Southwesterly of and parallel to said centerline North $80^{\circ}48'$ West, 187 feet, more or less, to a point for the intersection of said existing Southerly Right of Way line with the Southerly Right of Way line for said

relocation and being located 75 feet Southwesterly of and perpendicular distance from Sta. 596+00 on said centerline;

Thence along the Southerly Right of Way line for said relocation as follows: Perpendicular to said centerline, South $09^{\circ}12'$ West, 25 feet to a point 100 feet Southwesterly of and perpendicular distance from Sta. 596+00 on said centerline;

Thence 100 feet Southwesterly of and parallel to said centerline, North $80^{\circ}48'$ West, 700 feet to a point 100 feet Southwesterly of and perpendicular distance from Sta. 589+00 on said centerline;

Thence perpendicular to said centerline North $09^{\circ}12'$ East, 25 feet to point in the existing Southerly Right of Way line and being located 75 feet Southwesterly of and perpendicular distance from Sta. 589+00 on said centerline;

Thence departing from the Southerly Right of Way line for said relocation along the existing Southerly Right of Way line as follows: 75 feet Southwesterly of and parallel to said centerline North $80^{\circ}48'$ West, 839 feet to a point 75 feet Southwesterly of and perpendicular distance from P. T. Sta. 580+61 on said centerline;

Thence 75 feet Southwesterly of and concentric to the arc of a $02^{\circ}00'$ curve on said centerline (radius = 2864.93 feet; tangent distance = 321 feet; central angle = $12^{\circ}47'$) along a curve to the right 210.57 feet to a point 75 feet Southwesterly of and perpendicular distance from Sta. 578+55.8 on said centerline;

Thence perpendicular to said centerline North $13^{\circ}18'$ East, 15 feet to a point for the intersection of said existing Southerly Right of Way line with the Southerly Right of Way line for said relocation, said point being 60 feet Southwesterly of and perpendicular distance from Sta. 578+55.8 on said centerline;

Thence departing from said existing Southerly Right of Way line along the Southerly Right of Way line for said relocation as follows: 60 feet Southwesterly of and concentric to the arc of a $02^{\circ}00'$ curve on said centerline (radius = 2864.93 feet; tangent distance = 321 feet; central angle = $12^{\circ}47'$) along a curve to the right 443.09 feet to a point 60 feet Southwesterly of and perpendicular distance from P. C. Sta. 574+21.8 on said centerline;

Thence 60 feet Southwesterly of and parallel to said centerline North $66^{\circ}01'$ West, 313 feet, more or less, to a point in a Westerly boundary line for said Fort Chaffee, same being the common line between said Sections Nos. 5 & 6, Township 7 North, Range 30 West;

Thence departing from the Southerly Right of Way line for said relocation along said common section line, same being a Westerly boundary line for said Fort Chaffee North 129.41 feet to the point of beginning, containing 10.28 acres, more or less.

(3) Parcel No. 3, 9.03 acres: A tract of land situated in the County of Sebastian, State of Arkansas, being part of Section No. 10, Township 7 North, Range 30 West of the 5th Principal Meridian and being more particularly described as follows:

From the corner common to Sections Nos. 3, 4, 9, & 10, Township 7 North, Range 30 West, situated in a Northerly boundary line for Fort

Chaffee, along the common line between said Sections Nos. 3 & 10, same being the Northerly boundary line for said Fort Chaffee East, 510.17 feet to the point of beginning, said point of beginning being the intersection of said Northerly boundary line with the Southerly Right of Way line for the relocation of State Highway No. 22 and being located 60 feet Southwesterly of and perpendicular distance from the centerline for said relocation;

Thence continuing along said common section line same being a Northerly boundary line for said Fort Chaffee East, 767.12 feet to a point in the Northerly Right of Way line for said relocation and being located 60 feet Northeasterly of and perpendicular distance from said centerline;

Thence along the boundary line for said Fort Chaffee, same being the Northerly Right of Way line for said relocation as follows: 60 feet Northeasterly of and parallel to said centerline, South $81^{\circ}00'$ East, 2586.1 feet to a point 60 feet Northeasterly of and perpendicular distance from P. C. Sta. 744+51.1 on said centerline;

Thence 60 feet Northeasterly of and concentric to the arc of a $01^{\circ}00'$ curve on said centerline (radius = 5729.65 feet; tangent distance = 118.4 feet; central angle = $02^{\circ}22'$) along a curve to the right, 239.18 feet to a point 60 feet Northeasterly of and perpendicular distance from P. T. Sta. 746+87.8 on said centerline;

Thence 60 feet Northeasterly of and parallel to said centerline, South $78^{\circ}38'$ East, 37.95 feet to a point for a Northeast corner of said Fort Chaffee and being located 60 feet Northeasterly of and perpendicular distance from said centerline;

Thence departing from said Northerly Right of Way line for said relocation, along an Easterly boundary line for said Fort Chaffee South $01^{\circ}05'$ East, 122.89 feet to a point in the Southerly Right of Way line for said relocation and being located 60 feet Southwesterly of and perpendicular distance from said centerline;

Thence departing from the boundary line for said Fort Chaffee, along the Southerly Right of Way line for said relocation as follows: 60 feet Southwesterly of and parallel to said centerline, North $78^{\circ}38'$ West, 84.44 feet to a point 60 feet Southwesterly of and perpendicular distance from P. T. Sta. 746+87.8 on said centerline;

Thence 60 feet Southwesterly of and concentric to the arc of a $01^{\circ}00'$ curve on said centerline (radius = 5729.65 feet; tangent distance = 118.4 feet; central angle = $02^{\circ}22'$) along a curve to the left, 234.22 feet to a point 60 feet Southwesterly of and perpendicular distance from P. C. Sta. 744+51.1 on said centerline;

Thence 60 feet Southwesterly of and parallel to said centerline; North $81^{\circ}00'$ West, 3343.78 feet to the point of beginning, containing 9.03 acres, more or less.

(4) Parcel No. 4, 0.09 acre: A tract of land situated in the County of Sebastian, State of Arkansas, being part of Section No. 10, Township 7 North, Range 30 West of the 5th Principal Meridian and being more particularly described as follows:

Beginning at a Northeast corner for Fort Chaffee, said point of beginning being the intersection of said corner with the existing Southerly Right of Way line for State Highway No. 22, situated in the common line between said Section No. 10 and Section No. 11, Township 7 North, Range 30 West and being located 35 feet Southwesterly of and perpendicular distance from the centerline for the relocation of State Highway No. 22;

Thence along the boundary line for said Fort Chaffee, same being the common line between said Sections 10 & 11, South 25.50 feet to a point in the Southerly Right of Way line for said relocation and being located 60 feet Southwesterly of and perpendicular distance from said centerline;

Thence along said Right of Way line 60 feet Southwesterly of and parallel to said centerline, North 78°38' West, 335 feet, more or less, to a point for the intersection of said Southerly right of way line for said relocation with a North boundary line for said Fort Chaffee and being located 60 feet Southwesterly of and perpendicular distance from said centerline;

Thence along a Northerly boundary line for said Fort Chaffee South 82°55' East, 331 feet, more or less to the point of beginning, containing 0.09 acre, more or less.

(5) Parcel No. 5, 0.70 acre: A tract of land situated in the County of Sebastian, State of Arkansas, being part of Section 17, Township 7 North, Range 29 West of the 5th Principal Meridian and being more particularly described as follows:

From the Northwest corner of the NE $\frac{1}{4}$ of said Section 17, Township 7 North, Range 29 West, situated in the Northerly boundary line for Fort Chaffee, same being the common line between Sections Nos. 17 and 8 of said Township 7 North, Range 29 West, along said common section line, same being the Northerly boundary line for said Fort Chaffee, East, 300 feet, more or less, to the point of beginning, said point of beginning being the intersection of said Northerly boundary line with the Southerly Right of Way line for the relocation of State Highway No. 22 and being located 75 feet Southwesterly of and perpendicular distance from the centerline of said relocation;

Thence continuing along said common section line, same being the Northerly boundary line for said Fort Chaffee, East 222.27 feet to a point in the Northerly Right of Way line for said relocation and being located 60 feet Northerly of and perpendicular distance from said centerline;

Thence along the Northerly Right of Way line for said relocation, 60 feet Northeasterly of and concentric to the arc of a 04°00' curve on said centerline, in a Southeasterly direction approximately 92 feet to a point in an Easterly boundary line for said Fort Chaffee;

Thence along said boundary line South 160 feet, more or less to a point in the Southerly Right of Way line for said relocation and being located 75 feet Southwesterly of and perpendicular distance from said centerline;

Thence along said Southerly Right of Way line as follows: 75 feet Southwesterly of and concentric to the arc of a $04^{\circ}00'$ curve on said centerline, in a Northwesterly direction approximately 220 feet, more or less, to a point 75 feet Southwesterly of and perpendicular distance from P. C. Sta. 965+48.3 on said centerline;

Thence 75 feet Southwesterly of and parallel to said centerline North $52^{\circ}36'$ West, 140 feet, more or less, to the point of beginning, containing 0.70 acre, more or less.

(6) Parcel No. 6, 5.25 acres: A tract of land situated in the County of Sebastian, State of Arkansas, being part of Section No. 17, Township 7 North, Range 29 West of the 5th Principal Meridian and being more particularly described as follows:

From the corner common to Sections Nos. 8, 9, 16 & 17 of said Township 7 North, Range 29 West, situated in the Northerly boundary line for Fort Chaffee, along the common line between said Sections 8 & 17, same being the Northerly boundary line for said Fort Chaffee, West 20 feet, more or less, to the point of beginning, said point of beginning being the intersection of the Northerly boundary line for said Fort Chaffee with the Southerly Right of Way line for the relocation of State Highway No. 22 and being located 60 feet Southeasterly of and perpendicular distance from Sta. 988+50.15 on the centerline for said relocation;

Thence along said Southerly Right of Way line for said relocation as follows: 60 feet Southeasterly of and parallel to said centerline, South $66^{\circ}14'$ West, 718.05 feet to a point 60 feet Southeasterly of and perpendicular distance from P. T. Sta. 580+77.5 back, 981+32.1 ahead, on said centerline;

Thence 60 feet Southeasterly of and concentric to the arc of a $04^{\circ}00'$ curve on said centerline in a Southwesterly direction approximately 245 feet to a point for the intersection of said Southerly Right of Way line for said relocation with the existing Southerly Right of Way line for said Highway No. 22 and being located 60 feet Southeasterly of and perpendicular distance from said centerline;

Thence departing from the Southerly Right of Way line for said relocation along the existing Southerly Right of Way in a Westerly direction approximately 580 feet to a point in a Northerly boundary line for said Fort Chaffee;

Thence along a boundary line for said Fort Chaffee as follows: East, 465 feet, more or less, to a point for a re-entrant corner of Fort Chaffee;

Thence North 70 feet, more or less, to a point in the Northerly Right of Way line for said relocation and being located 60 feet Northerly of and perpendicular distance from said centerline;

Thence along the Northerly Right of Way line for said relocation as follows: 60 feet Northwesterly of and concentric to the arc of a $04^{\circ}00'$ curve on said centerline (radius = 1432.69 feet; tangent distance = 846.6 feet; central angle = $61^{\circ}10'$) along a curve to the left 649.13 feet to a point 60 feet Northwesterly of and perpendicular distance from P. T. Sta. 980+77.5 back, 981+32.1, ahead on said centerline;

Thence 60 feet Northwesterly of and parallel to said centerline North 66°14' East, 444.55 feet to a point in the common line between said Sections 8 & 17 and being located 60 feet Northwesterly of and perpendicular distance from Sta. 985+76.65 on said centerline;

Thence along said common section line East, 297.76 feet to the point of beginning, containing 5.25 acres, more or less.

History. Acts 1997, No. 1260, § 2.

22-7-303. Description of land.

From and after passage of this subchapter, and upon receipt by the Governor of any subsequent surveys and descriptions of the lands and areas of Fort Chaffee prepared at the direction of the United States Army Corps of Engineers which may describe lands or areas which are erroneously described in this subchapter, or which may describe lands and areas which are omitted from the descriptions of lands and areas in this subchapter, the Governor is authorized to amend and correct the descriptions of said lands or areas so as to include such lands or areas within the jurisdiction of the State of Arkansas as is exercised over other lands generally within this state, by causing such subsequent surveys and descriptions to be filed with the Secretary of State and with the respective circuit clerks and recorders of Franklin, Logan, Sebastian, and Crawford Counties.

History. Acts 1997, No. 1260, § 3.

22-7-304. Resolution of discrepancies in description of land.

Any discrepancy in the descriptions set forth in this subchapter and in the descriptions of any subsequent surveys prepared by the United States Army Corps of Engineers shall be resolved and interpreted as to extend the legislative jurisdiction of the State of Arkansas over all lands within the borders of the State of Arkansas.

History. Acts 1997, No. 1260, § 4.

22-7-305. Filing requirement.

A copy of this subchapter shall be filed with the respective circuit clerks and recorders of Franklin, Logan, Sebastian, and Crawford Counties, Arkansas.

History. Acts 1997, No. 1260, § 5.

22-7-306. Construction of subchapter.

(a) This subchapter shall not be construed or interpreted to the effect that the State of Arkansas by this subchapter proposes, purposes, or intends to alter, diminish, take, or enlarge any estate in lands, boundary between lands, interest in or title to any estate in lands which

may be described in this subchapter as to any person, firm, corporation, government, political subdivision, or entity as to any interest in any estate in the lands and areas described herein, except to assert the sovereignty and jurisdiction of the State of Arkansas over said lands as it exercises over other lands generally within this state.

(b) This subchapter shall not be construed or interpreted to the effect that the State of Arkansas by this subchapter proposes, purposes, or intends to determine, fix, compromise, confirm, cloud, affect, or settle any ownership, lien, boundary, claim, or interest in or title to any estate encompassed by the lands described in this subchapter as to any person, firm, corporation, government, political subdivision, or entity as to any interest in any estate in the lands and areas described herein, except to assert the sovereignty and jurisdiction of the State of Arkansas over said lands as it exercises over other lands generally within this state.

(c) This subchapter shall not be construed or interpreted to the effect that the State of Arkansas by this subchapter accepts, assumes, or undertakes financial liability for the remediation of any lands or areas which may exist in violation of the environmental protection laws, rules, and regulations of the United States or of the State of Arkansas.

History. Acts 1997, No. 1260, § 6.

CHAPTER 8
MOTOR VEHICLES

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. AUTOMOBILE AND PICKUP TRUCK ACQUISITION.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 22-8-101. Registration of state-owned motor vehicles — Report.
- 22-8-102. Leasing and renting of vehicles by state agencies.

SECTION.

- 22-8-103. Penalty for noncompliance with §§ 22-8-101 and 22-8-102.
- 22-8-104. Private use of state or county vehicles — Penalty.

22-8-101. Registration of state-owned motor vehicles — Report.

(a)(1) In order that a complete inventory of all state-owned motor vehicles is maintained, every state agency, including the Arkansas State Highway and Transportation Department, the Arkansas State Game and Fish Commission, the Department of Arkansas State Police, the Arkansas National Guard, and all constitutional offices shall annually register each motor vehicle owned by the State of Arkansas with the Director of the Department of Finance and Administration in a manner prescribed by the director.

(2) The registration shall include a description of each motor vehicle, including the year, make, model, license number, vehicle identification number, and other information which the director might require.

(3) Whenever any state agency sells or disposes of a motor vehicle, a complete record thereof shall be furnished to the director as authorization for the removal of the vehicle from the official state inventory.

(4) Whenever any state agency acquires a new or additional motor vehicle, the information required by this subsection to be placed in the state inventory shall be furnished to the director within ten (10) days after the acquisition of the vehicle by the agency.

(5) The director shall keep the inventory of motor vehicles owned by the State of Arkansas and its agencies current at all times, categorized in accordance with the motor vehicles owned by each of the respective state agencies.

(b)(1) The director shall make an annual report to the Legislative Council as to the number of motor vehicles owned by the State of Arkansas.

(2) The report shall include a comparison of the current inventory of motor vehicles with an inventory of the preceding year.

History. Acts 1977, No. 455, §§ 1, 2;
A.S.A. 1947, §§ 14-524, 14-525.

22-8-102. Leasing and renting of vehicles by state agencies.

(a) For purposes of this section:

(1) "Lease" means obtaining the use of a motor vehicle from any source for a monetary fee, for a period of thirty-one (31) days or more; and

(2) "Rental" means obtaining the use of a motor vehicle from any source for a monetary fee for a period of thirty (30) days or less.

(b)(1) Before any state agency shall lease any motor vehicle or renew any existing lease for a motor vehicle, the agency shall submit a written request to the State Procurement Director identifying the motor vehicles sought to be leased by the agency and all facts and circumstances the director may request to enable him or her to determine the economics, need, and feasibility of leasing the motor vehicle.

(2) Upon receipt, the director shall review the request to lease the motor vehicle, and if he or she determines that the lease is in the best interest of the State of Arkansas and that the agency has adequate funds to pay the lease, he or she may approve the request but only if he or she has first received the approval of the Legislative Council.

(3) After receiving the approval of the Legislative Council, the director shall stamp his or her approval on the request and return it to the state agency, which may then proceed to enter into the lease as proposed and approved by the director.

(4) In emergency situations, the director may approve a temporary lease of a motor vehicle, not to exceed thirty (30) days, but only if he or she has sought the advice of the Chair of the Legislative Council and

scheduled the temporary lease of a motor vehicle for consideration at the next meeting of the Legislative Council.

(c) If the director disapproves a proposed lease of a motor vehicle, he or she shall stamp his or her disapproval on the request and return it to the state agency, and it shall be unlawful for the state agency to proceed to lease the motor vehicle.

History. Acts 1977, No. 455, § 3; A.S.A. 1947, § 14-526; Acts 2001, No. 588, § 1.

Amendments. The 2001 amendment added (a) and redesignated the remaining subsections accordingly; substituted “request to the State Procurement Director” for “request therefor to the Director of the Office of State Purchasing of the Department of Finance and Administration” in

(b)(1); substituted “the director” for “the Director of the Office of State Purchasing of the Department of Finance and Administration” in (b)(1), (b)(2), and (b)(3); substituted “the director” for “the Director of the Office of Purchasing” in (b)(4) and (c); and made minor stylistic changes throughout.

22-8-103. Penalty for noncompliance with §§ 22-8-101 and 22-8-102.

Any department head or employee of the State of Arkansas failing or refusing to carry out the provisions of §§ 22-8-101 and 22-8-102 shall be deemed guilty of a Class B misdemeanor and upon conviction shall be punished in the manner provided by law.

History. Acts 1977, No. 455, § 4; A.S.A. 1947, § 14-527.

Cross References. Term of imprisonment, § 5-4-401(b)(2).

22-8-104. Private use of state or county vehicles — Penalty.

(a) It shall be unlawful for any state or county employee who is employed by the Arkansas State Highway and Transportation Department or by a county highway department, county judge, or road commissioner to use trucks and automobiles that belong to the state or county for any purpose other than performing actual service for the state or county.

(b) The use of publicly owned cars and trucks for individual use to make pleasure trips on Sundays and other holidays, except when going to and from the place of employment or transporting tools, material, and other supplies to places of necessity, is prohibited.

(c) The provisions of this section shall not be so construed as to prevent judges and road commissioners from making road inspection trips when the judge or road commissioner deems the inspections necessary.

(d) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars (\$50.00) and not more than one hundred dollars (\$100).

History. Acts 1941, No. 318, §§ 1, 2; A.S.A. 1947, §§ 14-501, 14-502.

tions for state passenger motor vehicles, § 19-4-906.

Cross References. Funding restric-

SUBCHAPTER 2 — AUTOMOBILE AND PICKUP TRUCK ACQUISITION

SECTION.

- 22-8-201. Title.
- 22-8-202. Purpose.
- 22-8-203. Definitions.
- 22-8-204. Applicability.
- 22-8-205. Allocation of vehicles — Priority listing.

SECTION.

- 22-8-206. Purchase of automobiles.
- 22-8-207. Purchase from qualified vendors.
- 22-8-208. Vehicle ownership.
- 22-8-209. Rules and regulations.
- 22-8-210. Motor vehicle renovation.

Cross References. Motor vehicle restrictions, § 19-4-906.

Travel regulations, § 19-4-901.

Effective Dates. Acts 1983, No. 493, § 16: Mar. 17, 1983. Emergency clause provided: "It has been found and determined by the Seventy-Fourth General Assembly that certain parts of this act are necessary for immediate effectiveness in order to promulgate rules and regulations, to establish procedures for implementing the provisions of this act and to maintain the fiscal integrity of the state. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1989 (1st Ex. Sess.), No. 68, § 33: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1993, No. 108, § 5: Feb. 11, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly, that authorizing the payment of costs associated with the renovation of State Police motor vehicles from the Motor Vehicle Acquisition Revolving Fund is economically beneficial to the State of Arkansas, and the savings realized from such renovations will allow the Arkansas Department of State Police to replace high mileage and possibly dangerous motor vehicles sooner. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from its passage and approval."

Acts 2003, No. 656, § 10: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that proper and effective management requires that changes to the finance and accounting laws of the state begin on the first day of the fiscal year; that the changes being made are important to the financial well being of the state particularly during the difficult financial climate the state is currently facing; and that this act is immediately necessary to allow for the finance and accounting changes to go into effect on the first day of the fiscal year for the proper and effective management of this state. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

22-8-201. Title.

This subchapter may be known as the “Automobile and Pickup Truck Acquisition Act for the State of Arkansas”.

History. Acts 1983, No. 493, § 1;
A.S.A. 1947, § 14-528.

22-8-202. Purpose.

The purpose of this subchapter is to establish procedures for the acquisition, disposal, and reassignment by the Department of Finance and Administration of automobiles and pickup trucks, as defined in § 22-8-203, to be acquired, owned, or otherwise disposed of by certain state agencies, boards, commissions, departments, and institutions of higher education.

History. Acts 1983, No. 493, § 2;
A.S.A. 1947, § 14-529.

22-8-203. Definitions.

As used in this subchapter:

(1) “Automobile” means a motorized vehicle equipped with pneumatic tires used for the transportation of persons, as commonly known and recognized by the Revenue Division of the Department of Finance and Administration, as a pleasure vehicle for licensing purposes as established by § 27-14-601(a)(1);

(2) “Emergency vehicle” means an automobile or pickup truck used in law enforcement or for protection of the public peace and health of the citizens of Arkansas;

(3) “Pickup truck” means a motorized vehicle equipped with pneumatic tires which are regularly and commonly rated as having a load capacity not exceeding three-fourths ($\frac{3}{4}$) ton, as recognized by the Revenue Division of the Department of Finance and Administration, for licensing purposes for trucks and trailers as established in § 27-14-601(a)(3)(A);

(4) “State agency” means a state agency, board, commission, department, or institution of higher education which derives any financial support from the fund accounts enumerated in §§ 19-5-302 — 19-5-304, 19-5-306, 19-5-307, 19-5-1011, 19-6-404, 19-6-411, and 25-4-117;

(5) “State Vehicle Inventory and Control System” means an automated system maintained by the Department of Finance and Administration to record and control the size and composition of the state’s vehicle fleet and to accumulate historical data on the costs associated with the vehicle fleet; and

(6) “Vehicle” or “motor vehicle” means an automobile or pickup truck as defined in this section, unless used out of context in implementing the purposes and intent of this subchapter.

History. Acts 1983, No. 493, § 3; A.S.A. 1947, § 14-530.

Cross References. Cessation of services to nonpaying users, § 25-4-117.

22-8-204. Applicability.

This subchapter shall not apply to the elected constitutional officers of the state, to the moneys appropriated by the General Assembly for financing the statutory responsibilities of these officers, to the Arkansas State Highway and Transportation Department, nor to any local political subdivision.

History. Acts 1983, No. 493, § 4; A.S.A. 1947, § 14-531.

22-8-205. Allocation of vehicles — Priority listing.

(a) Each state agency requesting the acquisition of an automobile or pickup truck shall:

(1) Have its existing automobiles and pickup trucks included on the state vehicle inventory and control system;

(2) Not exceed the number of motor vehicles as authorized by law for the agency; and

(3) Submit a schedule as required for replacing its automobiles or pickup trucks reflecting each vehicle's historical information, the need for replacement, and the disposition of the existing vehicle.

(b) From the information provided by state agencies requesting the acquisition of automobiles or pickup trucks, the Department of Finance and Administration shall prepare a prioritized ranking for the then-current fiscal year based upon:

(1) Age of the vehicle to be replaced;

(2) Actual and projected mileage of the vehicle to be replaced;

(3) A history of repair costs of the vehicle to be replaced;

(4) Number and average age of each state agency's fleet of vehicles; and

(5) Condition of state agency fleet and cost of maintenance of its vehicles.

(c) The Director of the Department of Finance and Administration, through its Marketing and Redistribution Section, shall have the authority to reassign a vehicle from a state agency to another state agency based upon need, age, condition, utilization, and justification but not to decrease a state agency's actual number of vehicles owned.

(d) The director shall review the schedule of prioritized ranking for acquiring vehicles, and he or she shall have the authority to make changes, as he or she deems necessary, to the priority listing. He or she shall then forward the priority listing to the Governor for his or her approval or modification.

(e) Upon securing the Governor's approved priority listing for acquisition of motorized vehicles, the director shall then proceed to acquire the vehicles, and he or she shall ensure that the replaced vehicle is transferred to the Marketing and Redistribution Section of the Depart-

ment of Finance and Administration within thirty (30) days for disposal.

History. Acts 1983, No. 493, § 5;
A.S.A. 1947, § 14-532.

22-8-206. Purchase of automobiles.

(a) The Director of the Department of Finance and Administration shall purchase vehicles for state agencies from moneys as appropriated and made available by the General Assembly.

(b) There is created and established upon the financial records of the Department of Finance and Administration, the Treasurer of State, and the Auditor of State a fund to be known as the "Motor Vehicle Acquisition Revolving Fund", which shall be used for the purpose of acquiring motor vehicles as authorized by this subchapter.

(c)(1) The Motor Vehicle Acquisition Revolving Fund shall be financed by its proportionate share of moneys made available from:

(A) The allocation of general revenues as authorized by the Revenue Stabilization Law, § 19-5-101 et seq.;

(B) Moneys made available upon the disposal of used vehicles, which moneys shall be deposited to the credit of the Motor Vehicle Acquisition Revolving Fund rather than being deposited to the owning state agency's fund;

(C) Deposits of moneys from benefiting state agencies; and

(D) Transfers from other State Treasury funds and fund accounts of benefiting state agencies.

(2) Upon approval by the Chief Fiscal Officer of the State, the appropriation and funds shall be transferred from the Motor Vehicle Acquisition Revolving Fund to the designated appropriation and fund of the state agency.

(d)(1) In the event that the director determines that any state agency, as defined by § 22-8-203(3), has sufficient funding from sources other than general revenues which may be used to purchase vehicles requested by the agency, he or she shall transfer, on his or her books and on the books of the Auditor of State and the Treasurer of State, an amount equal to the price of the vehicles from the fund from which the funding is available to the Motor Vehicle Acquisition Revolving Fund.

(2) Upon approval by the Chief Fiscal Officer of the State, the Motor Vehicle Acquisition Revolving Fund appropriation shall be transferred from the Motor Vehicle Acquisition Revolving Fund to the designated appropriation of the state agency.

(3) In the event that the funds are held in depositories other than the State Treasury, the administrative head of the affected state agency shall issue a check drawn against the funds, which shall be deposited in the Motor Vehicle Acquisition Revolving Fund as a nonrevenue receipt.

(e) All deposits and transfers, other than transfers from the General Revenue Fund Account of the State Apportionment Fund, made to the Motor Vehicle Acquisition Revolving Fund shall be classified as a refund to expenditure.

(f) After seeking the advice of the Legislative Council, in order to effectuate the intent and purposes of this subchapter, the Chief Fiscal Officer of the State shall have the authority to transfer appropriations:

(1) From the Property Sale Holding Appropriation to the Motor Vehicle Acquisition Revolving Fund appropriation; and

(2) From the appropriation or budget classification provided by the General Assembly for the purchase of automobiles or pickup trucks to the Motor Vehicle Acquisition Revolving Fund appropriation.

(g) The Department of Human Services is hereby exempt from this section insofar that federal funds and state general revenues necessary to match the federal funds may be transferred to the Motor Vehicle Acquisition Revolving Fund when the Director of the Department of Finance and Administration has determined that the Department of Human Services has sufficient funding which may be used to purchase requested vehicles.

History. Acts 1983, No. 493, §§ 6, 8, 10-12; A.S.A. 1947, §§ 14-533, 14-535, 14-537 — 14-539; Acts 1989 (1st Ex. Sess.), No. 68, § 23; 2003, No. 656, § 9.

A.C.R.C. Notes. Acts 1993, No. 508, § 12, provided: “At least fifty percent (50%) of the general revenues deposited each fiscal year into the Motor Vehicle Acquisition Revolving Fund shall be used for motor vehicle purchases and/or motor vehicle renovation costs for the Department of Arkansas State Police.”

Amendments. The 2003 amendment added (c)(2); in present (c)(1), added the subdivision designations and made stylistic changes; inserted present (d)(2); redesignated former (d)(2) as (d)(3); and made stylistic changes in (d)(1) and (3).

Cross References. Motor Vehicle Acquisition Revolving Fund, § 19-5-1002.

Revenue Stabilization Law, § 19-5-101 et seq.

22-8-207. Purchase from qualified vendors.

The Director of the Department of Finance and Administration shall have the authority to purchase new or used vehicles from qualified vendors in accordance with the Arkansas Procurement Law, § 19-11-201 et seq.

History. Acts 1983, No. 493, § 9; A.S.A. 1947, § 14-536.

22-8-208. Vehicle ownership.

Vehicles acquired or assigned under the provisions of this subchapter shall be the property of the state agency to which the vehicle is assigned, and legal title to the vehicle is to rest with the agency.

History. Acts 1983, No. 493, § 7; A.S.A. 1947, § 14-534.

22-8-209. Rules and regulations.

The Director of the Department of Finance and Administration, through his or her disbursing officer, is authorized to promulgate such

rules and regulations as deemed necessary to implement the provisions and intent of this subchapter.

History. Acts 1983, No. 493, § 13;
A.S.A 1947, § 14-540.

22-8-210. Motor vehicle renovation.

(a) Funds deposited into the Motor Vehicle Acquisition Revolving Fund created by § 19-5-1002(a) and § 22-8-206(b), which may be made available for the purchase of motor vehicles for the Department of Arkansas State Police, may in addition be made available and used for expenses associated with the renovation of state police motor vehicles.

(b) If the Director of the Department of Arkansas State Police determines the cost associated with renovating or repairing state police motor vehicles is economically beneficial, he or she shall contract with a qualified vendor and, when invoiced, shall submit said invoice to the Chief Fiscal Officer of the State, who shall direct payment from moneys set aside in the fund for the department.

History. Acts 1993, No. 108, § 1.

CHAPTER 9
PUBLIC WORKS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. AWARD OF CONTRACTS.
3. MINIMUM PREVAILING WAGE.
4. CONTRACTORS' BONDS.
5. DEPOSIT OF SECURITIES.
6. RETAINAGE.
7. DISPLACED PERSONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 22-9-101. Observation by registered professionals required.
- 22-9-102. [Repealed.]
- 22-9-103. Authorization for state agency

SECTION.

- to commit cash funds for construction — Penalty.
- 22-9-104. Proposed capital expenditures.

Cross References. County judge not to be interested party in contracts concerning public buildings, § 16-15-110.

Effective Dates. Acts 1939, No. 335, § 4: approved Mar. 16, 1939. Emergency clause provided: "That in order to safeguard life, health and property, and to promote welfare, an emergency is hereby declared to exist and this act shall take effect immediately upon its passage."

Acts 1971, No. 104, § 4: Feb. 17, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that greater control should be exercised over the expenditures of cash funds by agencies, departments and institutions of the state for construction purposes; that this act is designed to provide such controls and should be given effect immediately. Therefore, an emergency is

hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1977, No. 273, § 3: Feb. 28, 1977. Emergency clause provided: “It is hereby found and determined by the General Assembly that greater control should be exercised over the expenditures of cash

funds by agencies, departments and institutions of the state for construction purposes; that this act is designed to provide such controls and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

RESEARCH REFERENCES

ALR. Statute or ordinance requiring, or giving preference to, employment of residents by contractors or subcontractors engaged in public works or improvement projects. 36 ALR 4th 941.

Amount of appropriation as limitation on damages for breach of contract recoverable by one contracting with government agency. 40 ALR 4th 998.

22-9-101. Observation by registered professionals required.

- (a) Neither the state nor any township, county, municipality, village, or other political subdivision of the state shall engage in the construction of any public works involving engineering or architecture for which the plans, specifications, and estimates have not been made by and the construction executed under the observation of a registered professional engineer or architect, in their respective areas of expertise, who are licensed to practice under the laws of Arkansas.
- (b) Nothing in this section shall be held to apply to any public works wherein the contemplated construction expenditure:
- (1) For an engineering project does not exceed twenty-five thousand dollars (\$25,000); or
 - (2) For an architectural project does not exceed one hundred thousand dollars (\$100,000).
- (c) This section shall not apply to any school district, county, municipality, or township project which is planned and executed according to plans and specifications furnished by authorized state agencies.

History. Acts 1939, No. 335, §§ 1, 2; 1985, No. 321, § 1; A.S.A. 1947, §§ 14-601, 14-602; Acts 1993, No. 284, § 1; 1995, No. 1108, § 3.

22-9-102. [Repealed.]

Publisher’s Notes. This section, concerning employment of Arkansas citizens, was repealed by Acts 1993, No. 645, § 2. The section was derived from Acts 1933,

No. 261, §§ 1-4; Pope’s Dig., §§ 8533-8536; Acts 1941, No. 421, § 1; A.S.A. 1947, §§ 14-607 — 14-610.

22-9-103. Authorization for state agency to commit cash funds for construction — Penalty.

(a)(1) It shall be unlawful for any agency, department, or institution supported by state-appropriated funds or cash funds to expend any cash funds of the agency for the construction of a building or to incur any obligation committing or pledging the cash funds of the agency for the construction of a building unless the agency, department, or institution has previously obtained specific authorization by legislative enactment for the construction of the building to be paid, wholly or in part, from cash funds of the agency.

(2) If the agency does not have specific legislative authority to construct a building from cash funds, the agency, department, or institution shall first obtain specific legislative authorization for the construction of the building prior to the expending of any cash funds of the agency, or prior to entering into any contract or agreement with respect to constructing any building to be paid from cash funds of the agency.

(b) In the interim between legislative sessions, authorization for the construction of buildings and for the expending of cash funds of the agency therefor may be given by the Governor, in writing.

(c) Nothing in this section shall apply to public school districts.

(d) Any board, commission, or authorized head of any agency, department, or institution which shall expend any cash funds of the agency in violation of the provisions of this section shall be guilty of malfeasance in office and shall be removed therefrom.

History. Acts 1971, No. 104, §§ 1-3;
1977, No. 273, § 1; A.S.A. 1947, §§ 14-649
— 14-651.

22-9-104. Proposed capital expenditures.

(a) Prior to the convening of regular sessions of the General Assembly, each state agency, department, or institution shall submit a proposed capital expenditures request which shall:

(1) Identify each public works construction project proposed to be constructed or obligated by construction contract by the governmental body during the next biennial period of the state;

(2) Indicate a method of financing the construction through state appropriation, federal grants, revenue bonds, or revenue notes provided by law, the use of agency or institutional receipts, the use of donated funds from private sources, or a combination of one (1) or more such sources; and

(3) Be accompanied by estimates of the cost of maintaining and operating the capital improvement facility once constructed.

(b) After appropriate hearings and review, the General Assembly shall designate each proposed capital expenditure for construction which has been approved and the method of financing the proposed capital expenditure.

(c) Proposed capital expenditure projects shall not be undertaken until approved by the General Assembly.

(d)(1) In unusual circumstances between sessions of the General Assembly, a state agency, department, or institution which needs to make a capital expenditure in excess of two hundred fifty thousand dollars (\$250,000), which has not been approved by the General Assembly, may submit a request for the expenditure to the Chief Fiscal Officer of the State, who shall review the request and submit his or her recommendation for the method of finance for the expenditure to the Legislative Council for its advice and recommendation.

(2) Upon obtaining the advice and recommendation of the Legislative Council, the state agency, department, or institution is authorized to proceed with the capital expenditure, subject to the provisions of the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., and other fiscal laws of the state.

(e) As used in this section, "public works construction project" means the purchase or construction of all lands, buildings, structures, utility systems, and similar facilities for the use of the governmental body filing the request but shall not include projects involving less than two hundred fifty thousand dollars (\$250,000).

(f) Nothing in this section shall apply to public school districts.

History. Acts 1971, No. 104, § 3; 1977, No. 273, § 1; A.S.A. 1947, § 14-651; Acts 1999, No. 776, § 1.

Amendments. The 1999 amendment substituted "two hundred fifty thousand

dollars (\$250,000)" for "fifty thousand dollars (\$50,000)" in (d)(1) and (e); deleted "or the mere repair, alteration, or renovation of facilities" at the end of (e); and made stylistic changes.

SUBCHAPTER 2 — AWARD OF CONTRACTS

SECTION.

- 22-9-201. Applicability of §§ 22-9-202 — 22-9-204.
- 22-9-202. Construction of this section and §§ 22-9-203 and 22-9-204.
- 22-9-203. Public improvements generally — Award procedure.
- 22-9-204. Subcontractors exceeding \$20,000 — Penalty.
- 22-9-205. Public improvements generally — Interest on delinquent payments.
- 22-9-206. [Repealed.]
- 22-9-207. Construction or purchase of memorial, statue, bust, etc.

SECTION.

- 22-9-208. Renovation of historic sites — Legislative intent and construction.
- 22-9-209. Renovation of historic sites — Advertising of contracts.
- 22-9-210. Renovation of historic sites — Award of contracts.
- 22-9-211. Renovation of historic sites — Payment.
- 22-9-212. Public improvements generally — Trench or excavation safety systems.
- 22-9-213. Exemption of state projects from local regulation.

Effective Dates. Acts 1949, No. 159, § 6: approved Feb. 23, 1949. Emergency clause provided: "Since numerous complaints have been made with regard to the

manner of letting contracts for construction for the state and local taxing units and it being the belief that passage of this act will result in substantial savings of

money to the public, and the possibility of unethical practices will be materially eliminated and this act, being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall take effect and be in force from and after its passage."

Acts 1957, No. 183, § 2: Mar. 8, 1957. Emergency clause provided: "Because of the large volume of proposed construction by taxing agencies, and the confusion that now exists on a large scale because the general contractor does not have full responsibility for all the work to be performed to the detriment of all concerned, an emergency is therefore declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval by the Governor."

Acts 1961, No. 477, § 2: Mar. 16, 1961. Emergency clause provided: "It is hereby found and declared that because of the large volume of proposed construction by taxing agencies and the confusion that now exists on a large scale concerning the handling of subcontractors' bids to the detriment of contractors, subcontractors, the taxing agencies and the public, the clarification made by this act is immediately needed to eliminate said confusion and resulting harmful effects on the public peace, health, safety and welfare. By reason thereof, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

Acts 1969, No. 135, § 4: became law without Governor's signature, Mar. 3, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that many contractors performing construction or repair contracts for public authorities in this state are often subject to undue and unnecessary delay in receiving payment for such contracts upon completion and acceptance thereof; that because of such unnecessary delays in making payment such contractors are subject to additional expense in borrowing funds to pay creditors which was not contemplated at the time the contract was entered into; that in most instances the delay in making payments

is not due to the lack of public funds, but is merely the result of carelessness or inaction on the part of the public authority owing the claim; and that the immediate passage of this act is necessary in order to encourage public authorities to make prompt payment of such claims or to permit the contractor to recover interest on the amount unpaid to compensate him for additional expense incurred because of such delay; and that the immediate passage of this act is necessary to correct this situation. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 758, § 6: Apr. 7, 1987. Emergency clause provided: "It is hereby found and declared that because of the large volume of proposed construction by taxing agencies and the confusion that now exists on a large scale concerning the handling of Bidding Procedures, to the detriment of contractors, subcontractors, the taxing agencies and the public, that the clarification made by this act is immediately needed to eliminate said confusion and resulting harmful effects on the public peace, health, safety and welfare. By reason thereof, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

Acts 1987, No. 759, § 3: Apr. 7, 1987. Emergency clause provided: "It is hereby found and declared that because of the large volume of proposed construction by taxing agencies and the confusion that now exists on a large scale concerning the handling of subcontractor bids, to the detriment of contractors, subcontractors, the taxing agencies and the public, that the clarification made by this Act is immediately needed to eliminate said confusion and resulting harmful effects on the public peace, health, safety and welfare. By reason thereof, an emergency is declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage and approval."

Acts 1989, No. 936, § 4: Mar. 24, 1989. Emergency clause provided: "It is hereby

found and determined by the Seventy-Seventh General Assembly of the State of Arkansas that the lack of civil penalties for violations of the public contracting laws reduces the effectiveness of those laws and that the effectiveness of the laws dealing with awarding of public works contracts serves an important public purpose. Therefore, in order to increase the effectiveness of the enforcement of the public works contracting laws, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 291, § 6: Mar. 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas that the well-being of Arkansas' craft workers are unnecessarily exposed to the hazards of trench excavation and the immediate passage of this act is necessary in order to protect the health and safety of the Arkansas worker. Therefore,

an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1229, § 8: Apr. 12, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that under present law it is unclear whether public construction projects conducted by State Building Services or other State agencies are subject to the payment of local construction fees, inspection by local inspectors, local zoning laws and other local regulations; that it is urgent that this matter be clarified immediately in order to protect the State from unnecessary restrictions on State construction projects and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Right of bidder for state or municipal contract to rescind bid on ground of mistake. 2 ALR 4th 991.

Statute prohibiting award of government contract to person or business entity previously convicted of bribery or attempting to bribe state public employee. 7 ALR 4th 1202.

Waiver of competitive bidding requirements for state and local public building and construction contracts. 40 ALR 4th 968.

Am. Jur. 64 Am. Jur. 2d, Pub. Works, § 29 et seq.

C.J.S. 72 C.J.S. Supp., Pub. Contr., § 7 et seq.

22-9-201. Applicability of §§ 22-9-202 — 22-9-204.

(a) The provisions of §§ 22-9-202 — 22-9-204 shall not apply to contracts awarded by the State Highway Commission for construction or maintenance of public highways, roads, or streets under the provisions of §§ 27-67-206 and 27-67-207.

(b) The provisions of § 22-9-204 shall not apply to projects designed to provide utility needs of the state or any agency thereof, a municipality, or a county. Those projects shall include, but shall not be limited to, pipeline installation, sanitary projects, light earth work and foundation work, local flood control, sanitary landfills, drainage projects, site clearing, water lines, streets, roads, alleys, sidewalks, water channelization, light construction sewage, water works, and improvements to street and highway construction.

(c)(1) The notice provisions of §§ 19-4-1401, 19-4-1405, and 22-9-203 pertaining to the project amount and the time frames of the advertise-

ment shall not apply to contracts for the performance of any work or the making of any capital improvements due to emergency contracting procedures.

(2) The requirements of § 22-9-203(e) shall not apply to contracts for the performance of any work or the making of any capital improvements due to emergency contracting procedures.

(3) "Emergency contracting procedures" means the acquisition of services and materials for capital improvements which are in accordance with the Arkansas Building Authority minimum standards and criteria.

(4) Emergency contracting procedures may include sole sourcing or competitive quote bids.

(5) The Director of the Arkansas Building Authority or a designee may make or authorize others to make emergency contracting procedures as defined in subdivision (c)(3) of this section and in accordance with the authority minimum standards and criteria.

History. Acts 1949, No. 159, § 5; 1977, No. 370, § 2; A.S.A. 1947, § 14-614n; Acts 1999, No. 776, § 2; 2001, No. 162, § 1.

Amendments. The 1999 amendment added (c).

The 2001 amendment, in (b), inserted "the state or any agency thereof," and substituted "landfills" for "landfill" and "water lines" for "waterline"; redesignated

former (c), (c)(1) and (c)(2) as present (c)(1), (c)(3) and (c)(5) respectively; inserted present (c)(2) and (c)(4); substituted "22-9-203 pertaining to the project amount and the time frames of the advertisement" for "22-9-204" in present (c)(1); and substituted "(c)(3)" for "(c)(1)" in present (c)(5).

22-9-202. Construction of this section and §§ 22-9-203 and 22-9-204.

Nothing in this section and §§ 22-9-203 and 22-9-204 shall be construed to prevent any taxing unit from performing any of the work or making any of the improvements referred to in this section and §§ 22-9-203 and 22-9-204 by the use of its own employees, or to require that, as a condition precedent to the right to use its own employees, bids must be received from contractors, nor shall this section and §§ 22-9-203 and 22-9-204 be construed to amend or repeal any law which requires the publication of notice in those instances where the estimated amount of the cost of the proposed improvements shall be less than ten thousand dollars (\$10,000), since it is the intention of this section and §§ 22-9-203 and 22-9-204 to provide a uniform procedure to be followed by all taxing units whenever work is to be done under formal contract.

History. Acts 1949, No. 159, § 4; A.S.A. 1947, § 14-614.

Publisher's Notes. Acts 1949, No. 159, § 5, as amended by Acts 1977, No. 370, § 2, provided that the provisions of §§ 22-9-202 — 22-9-204 would not apply to contracts awarded by the State Highway Commission for construction or maintenance

of public highways, roads, or streets under the provisions of Acts 1929, No. 65, as amended, and laws supplemental and amendatory thereto and that the provisions of § 22-9-204 would not apply to projects designed to provide utility needs of a municipality or county. Those projects included, but were not limited to, pipeline

installation, sanitary projects, light earth work, and foundation work, local flood control, sanitary landfill, drainage projects, site clearing, water lines, streets,

roads, alleys, sidewalks, water channelization, light construction, sewage and water works, and improvements to street and highway construction.

22-9-203. Public improvements generally — Award procedure.

(a) No contract providing for the making of major repairs or alterations, for the erection of buildings or other structures, or for making other permanent improvements shall be entered into by the state or any agency thereof, any county, municipality, school district, or other local taxing unit with any contractor in instances where all estimated costs of the work shall exceed the sum of twenty thousand dollars (\$20,000) unless:

(1) The state or any agency of the state shall have first published notice of its intention to receive bids one (1) time each week for not less than two (2) consecutive weeks for projects more than the amount of fifty thousand dollars (\$50,000) and published notice of its intention to receive bids one (1) time each week for not less than one (1) week for projects more than the quote bid limit, as provided under the Arkansas Building Authority minimum standards and criteria, but less than or equal to fifty thousand dollars (\$50,000) in a newspaper of general circulation published in the county in which the proposed improvements are to be made or in a trade journal reaching the construction industry; and

(2) Any county, municipality, school district, or other local taxing unit shall have first published notice of its intention to receive bids one (1) time each week for not less than two (2) consecutive weeks in a newspaper of general circulation published in the county in which the proposed improvements are to be made or in a trade journal reaching the construction industry.

(b)(1) The date of publication of the last notice shall be not less than one (1) week before the day fixed therein for the receipt of bids.

(2) If there is no newspaper regularly published in the county in which the proposed work is to be done, the notices may be published in any newspaper having a general circulation in the county.

(3) Nothing in this section shall be construed as limiting to two (2) the number of weeks the notices may be published for projects over the amount of fifty thousand dollars (\$50,000), limiting to one (1) the number of weeks the notices may be published for projects more than the quote bid limit, as provided under subsection (a) of this section, and less than or equal to fifty thousand dollars (\$50,000), and as limiting to two (2) the number of weeks the notices may be published for all other projects.

(c)(1) All notices shall contain:

(A) A brief description of the kind or type of work contemplated;

(B) The approximate location thereof;

(C) The place at which prospective bidders may obtain plans and specifications;

(D) The date, time, and place at which sealed bids will be received;
(E) The amount, which may be stated in a percentage, of the bid bond required;

(F) A statement of the taxing unit's reservation of the right to reject any or all bids and to waive any formalities; and

(G) Such other pertinent facts or information which to it may appear necessary or desirable.

(2)(A)(i) Every bid submitted on public construction contracts for any political subdivision of the state shall be void unless accompanied by a cashier's check drawn upon a bank or trust company doing business in this state or by a corporate bid bond.

(ii) Every bid submitted on public construction contracts for the state or any agency or department of the state shall be void unless accompanied by a cashier's check drawn upon a bank or trust company doing business in this state or by a corporate bid bond, except for projects under twenty thousand dollars (\$20,000).

(iii) No bid bond shall be required for public construction contracts for the state or any agency or department of the state under or equal to twenty thousand dollars (\$20,000).

(B) This bid security shall indemnify the public against failure of the contractor to execute and deliver the contract and necessary bonds for faithful performance of the contract.

(C) The bid security shall provide that the contractor or surety must pay the damage, loss, cost, and expense subject to the amount of the bid security directly arising out of the contractor's default in failing to execute and deliver the contract and bonds.

(D) Liability under this bid security shall be limited to five percent (5%) of the amount of the bid.

(d) On the date and time fixed in the notice, the board, commission, officer, or other authority in which or in whom authority is vested to award contracts shall open and compare the bids and thereafter award the contract to the lowest responsible bidder but only if it is the opinion of the authority that the best interests of the taxing unit would be served thereby.

(e) In the event that all bids submitted exceed the amount appropriated for the award of the contract, the state agency or its designated representatives shall have the authority to negotiate an award with the apparent responsible low bidder but only if the low bid is within twenty-five percent (25%) of the amount appropriated.

(f)(1) In the event that all bids submitted exceed the amount appropriated for the award of the contract and if bidding on alternates was not required by the plans and specifications, the county, municipality, school district, or other local taxing unit shall have the authority to negotiate an award with the apparent responsible low bidder but only if the low bid is within twenty-five percent (25%) of the amount appropriated.

(2) If the plans and specifications for the project require bids on alternates in addition to a base bid, there shall be no more than three (3) alternates, and the alternates shall:

(A) Be deductive; and

(B) Be set forth in the plans and specifications in numerical order.

(3) If all bids submitted exceed the amount appropriated for the award of the contract, then the county, municipality, school district, or other local taxing unit may determine the apparent responsible low bidder by deducting the alternates in numerical order.

(4) After making the deductions, if the cost of the project is less than twenty-five percent (25%) above the amount appropriated, then and only in that event, the county, municipality, school district, or other local taxing unit may negotiate an award with the low bidder so determined.

(g) Whenever it is obvious from examination of the bid document that it was the intent of a bidder to submit a responsive bid and that the bid, if accepted, would create a serious financial loss to the bidder because of scrivener error, such as the transposition of figures, the board, commission, officer, or other authority in which or in whom authority is vested has the authority to relieve the bidder from responsibility under the bond and may reject the bid.

(h) For projects of this state or any agency of the state, "amount appropriated" within this section means funds currently available for the project as determined by the state or any agency or department of the state or any county, municipality, school district, or other local taxing unit prior to the opening of any bids.

(i) No contract providing for the making of major repairs or alterations, for the erection of buildings or other structures, or for making other permanent improvements shall be entered into by the state, any agency of the state, any county, municipality, school district, or other local taxing unit with any contractor in instances where all estimated costs of the work shall exceed the sum of seventy-five thousand dollars (\$75,000) unless the bid documents contain statements which encourage the participation of small, minority, and women's business enterprises.

(j)(1) Notwithstanding any other provision of law to the contrary, any municipality or sanitation authority may enter into contracts with private persons, firms, associations, corporations, joint ventures, or other legal entities, including a combination of any of those entities, to provide for the design, building, operation, and maintenance of all or any portion of its wastewater treatment system, storm water treatment system, or water treatment system, or any combination of those systems.

(2) The contracts may include provisions for the design, financing, construction, repair, reconditioning, replacement, operation, and maintenance of the system, or any combination of those services and functions.

(3) Prior to entering into a contract under this section, the governing authority shall solicit qualifications-based competitive sealed proposals.

(4) The governing authority shall first establish criteria for evaluation of any entity submitting proposals on the contracts for the purpose

of assisting the governing authority in making a review of the entity's previous performance on projects of comparable nature and magnitude and the environmental compliance record of the entity during the five (5) years immediately preceding the execution of the contract.

(5) The governing authority shall take into consideration the information to assist in determining the eligibility of any entity.

(6) The award of a contract under this section shall be made to the responsible and responsive entity whose proposal is determined in writing to be the most advantageous to the governmental authority, taking into consideration the evaluation factors set forth in the request for proposals.

(7) The governing authority of the municipality or the sanitation authority shall employ an appropriately licensed professional who is independent of the contractor to monitor and perform an independent review and inspection of the design-build-operate-maintenance contract, or any part thereof, during its performance.

(8) Before soliciting proposals for a design-build-operation-maintenance project, the governing authority of the municipality or the sanitation authority shall employ an appropriate licensed professional to perform the necessary studies and preliminary design to clearly establish the parameters for the project, including:

- (A) Acceptable processes and structural alternatives; and
- (B) Cost estimates for the acceptable alternatives.

History. Acts 1949, No. 159, §§ 1, 2; 1977, No. 370, § 1; 1981, No. 266, § 1; A.S.A. 1947, §§ 14-611, 14-612; Acts 1987, No. 758, § 4; 1995, No. 1319, § 2; 1997, No. 1193, § 1; 1999, No. 219, § 3; 1999, No. 675, §§ 1, 2; 1999, No. 1309, § 1; 1999, No. 1310, § 1; 2001, No. 921, § 1; 2001, No. 1051, § 1; 2003, No. 1297, § 1.

Publisher's Notes. As to applicability of this section to certain contracts awarded by the State Highway Commission, see Publisher's Notes to § 22-9-202.

Amendments. The 1999 amendment by No. 219 substituted "cashier's check drawn upon a bank or trust company doing business in this state" for "certified check" twice in (c)(2)(A). This amendment was superseded by the amendment by Acts 1999, No. 1309.

The 1999 amendment by No. 675 substituted "fifty thousand dollars (\$50,000)" for "thirty thousand dollars (\$30,000)" in the introductory paragraph of (a); deleted the former last sentence of (a)(2); in the introductory paragraph of (e), deleted "and if bidding on alternates was not required by the plans and specifications" and substituted "twenty-five percent (25%)" for "twenty percent (20%)"; deleted

former (f); redesignated former (g) and (h) as present (f) and (g), respectively; in (g) substituted "of the state" for "thereof" and "opening" for "solicitation"; and made stylistic changes.

The 1999 amendment by No. 1309 rewrote (c)(2)(A).

The 1999 amendment by No. 1310 added (h).

The 2001 amendment by No. 921 inserted (f) and redesignated the remaining subsections accordingly; in present (g), inserted "that" preceding the second occurrence of "the bid", inserted a comma following "error", inserted "the" preceding "transposition", and twice substituted "the" for "his"; and deleted a comma following "repairs" in (i).

The 2001 amendment by No. 1051 substituted "twenty thousand dollars (\$20,000)" for "ten thousand dollars (\$10,000) for counties and municipalities and the sum of fifty thousand dollars (\$50,000) for any school district" in the introductory language in (a); and, in (a)(1), substituted "more than the amount" for "over the amount" and "under the Arkansas Building Services minimum standards and criteria" for "under subsection (a) of this section."

The 2003 amendment added (j).

Cross References. Local Governmental Compliance Act, § 10-4-301 et seq.

CASE NOTES

ANALYSIS

Applicability.

Award of contract.

Housing authority.

Rejection of bids.

Applicability.

This section only applies to such contracts as the public body is authorized to make for major repairs or alterations, for the erection of buildings or other structures, or for making other permanent improvements. *Moore v. East*, 250 Ark. 43, 464 S.W.2d 52 (1971).

A contract calling for installation of street and parking area lighting did not come within the provisions of this section. *Moore v. East*, 250 Ark. 43, 464 S.W.2d 52 (1971).

Since this section applies to specific types of public contracts — major repairs or alterations, erection of buildings or other structures, or permanent improvements, costing over a certain dollar amount; where this specific statute governs the subject, its application is favored over the more general provisions of §§ 19-11-401 — 19-11-405 (repealed). *Conway Corp. v. Construction Eng'rs, Inc.*, 300 Ark. 225, 782 S.W.2d 36 (1989), cert. denied, 494 U.S. 1080, 110 S. Ct. 1809, 108 L. Ed. 2d 939 (1990).

Award of Contract.

Subsection (d) does not necessarily contemplate an immediate award at the time bids are opened. *Quality Fixtures, Inc. v. Multi-Purpose Facilities Bd.*, 337 Ark. 115, 986 S.W.2d 865 (1999).

Housing Authority.

Housing authority is not governed by subsections (a) and (b) of this section regarding bidding on contracts because it is neither an agency of the state nor a local taxing unit. *Fagan Elec. Co. v. Housing Auth.*, 216 Ark. 932, 228 S.W.2d 39 (1950).

Rejection of Bids.

This section does not provide that the contract shall be let to the person whose bid is lowest in terms of money, but directs that the advertisement for bids contain a statement that the commission reserves the right to reject any or all bids. *Worth James Constr. Co. v. Jacksonville Water Comm'n*, 267 Ark. 214, 590 S.W.2d 256 (1979).

Under this section, one has the discretion to reject a bid so long as the rejection is for good cause and in good faith. *Conway Corp. v. Construction Eng'rs, Inc.*, 300 Ark. 225, 782 S.W.2d 36 (1989), cert. denied, 494 U.S. 1080, 110 S. Ct. 1809, 108 L. Ed. 2d 939 (1990).

Cited: *City of Damascus v. Bivens*, 291 Ark. 600, 726 S.W.2d 677 (1987).

22-9-204. Subcontractors exceeding \$20,000 — Penalty.

(a) As a condition to performing construction work for and in the State of Arkansas, all prime contractors shall use no other subcontractors when the subcontractors' portion of the project is twenty thousand dollars (\$20,000) or more, except those licensed by the Contractors Licensing Board and qualified in:

- (1) Mechanical, indicative of heating, air conditioning, ventilation, and refrigeration;
- (2) Plumbing;
- (3) Electrical; and
- (4) Roofing.

(b)(1) In the event the prime contractor is qualified and licensed by the board, he or she may use his or her own forces to perform those tasks listed in this section as subcontractors in one (1) or more of the trades listed.

(2)(A) A subcontractor, including the situation stated in subdivision (b)(1) of this section, may subcontract a portion of the listed work.

(B) However, a subcontractor is prohibited from subcontracting the work in its entirety.

(c)(1) When the prime contractor makes a definite decision regarding the subcontractors he or she intends to use, he or she shall place the name of each subcontractor in a blank space provided on the form of proposal of his or her bid.

(2) In the event that one (1) or more of the subcontractors named by the prime contractor in his or her successful bid thereafter refuses to perform his or her contract or offered contract, the prime contractor may substitute another subcontractor licensed by the board after having obtained prior approval from the architect or engineer and the owner. Additional approval must be obtained from the Arkansas Building Authority for capital improvement projects under its jurisdiction.

(d) The prime contractor shall submit written evidence that the substituted contractor is costing the same amount of money or less and, if costing less, that the savings will be deducted from the total contract of the prime contractor and rebated to the owner.

(e) It shall be mandatory that the mechanical, plumbing, electrical, roofing, and sheet metal subcontractors named on the form of proposal by the prime contractor awarded a contract under the provisions of this subchapter be given contracts by the prime contractor in keeping with their proposals to perform the items for which they were named.

(f)(1) It shall be a violation of this section for any prime contractor to submit a bid listing unlicensed contractors or to use unlicensed contractors on a public works project.

(2) It shall be a violation of this section for any subcontractor who is not licensed by the board to contract to perform work on a public works project.

(3) Any contractor or subcontractor who, after notice and hearing, is found to have violated this section shall pay to the authority a civil penalty of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500) and may be suspended from bidding on future public works contracts for a term of not less than six (6) months nor more than twelve (12) months.

(4) All hearings and appeals under this section shall be pursuant to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq. The authority shall have the power to file suit in the Pulaski County Circuit Court to obtain a judgment for the amount of any penalty not paid within thirty (30) days of service on the contractor of the order assessing the penalty.

(5) Penalties collected pursuant to this section shall be deposited in the Arkansas Building Authority Maintenance Fund.

History. Acts 1949, No. 159, § 3; 1957, No. 183, § 1; 1961, No. 477, § 1; 1983, No. 871, § 1; A.S.A. 1947, § 14-613; Acts 1987, No. 759, § 1; 1989, No. 936, § 1; 1991, No. 728, § 1; 1993, No. 645, § 1; 1999, No. 1250, § 1; 1999, No. 1496, § 1; 2001, No. 989, § 1; 2003, No. 364, § 18.

Publisher's Notes. As to applicability

of this section to certain contracts awarded by the State Highway Commission, see Publisher's Notes to § 22-9-202.

Amendments. The 1999 amendment by No. 1250 added (b)(2); and, in (c)(2), deleted "and the Construction Section of Arkansas State Building Services" following "the owner" and added the last sentence.

The 1999 amendment by No. 1496, in the introductory paragraph of (a), substituted "All" for "In each instance where the total bid amount submitted by the licensed prime contractor exceeds fifty thousand dollars (\$50,000), all" at the be-

ginning, and inserted "when the subcontractors' portion of the project is twenty thousand dollars (\$20,000) or more"; and made stylistic changes.

The 2001 amendment substituted "ventilation, and refrigeration" for "and ventilating" (a)(1); and made minor stylistic changes.

The 2003 amendment deleted "indicative of wiring and illuminating fixtures" following "Electrical" in (a)(3); and deleted "and sheet metal work, indicative of roofing application" following "Roofing" in (a)(4).

CASE NOTES

Out-of-State Firm.

This section did not require general contractor to accept Arkansas subcontractor's bid where subcontractor intended to

use an out-of-state firm to perform construction. *American Sheet Metal Works, Inc. v. Con-Ark Bldrs., Inc.*, 276 Ark. 366, 635 S.W.2d 241 (1982).

22-9-205. Public improvements generally — Interest on delinquent payments.

Whenever any agency of this state or of any county, municipality, or school district, or other local taxing unit or improvement district enters into a contract covered by the provisions of §§ 22-9-202 — 22-9-204 for the making of repairs or alterations or the erection of buildings or for the making of any other improvements, or for the construction or improvement of highways, roads, streets, sidewalks, curbs, gutters, drainage or sewer projects, or for any other construction project, and the contract provides that payment therefor shall be made upon completion and acceptance of the project, and the contractor, upon completion and approval of the project, presents a claim for payment of the amount due thereon in accordance with the terms of the contract, and the claim is not paid by the public authority within ninety (90) days from the date of presentation of the claim, then the public authority shall pay to the contractor interest at the rate of ten percent (10%) per annum on the unpaid amount due for all periods of time that the payment under the contract is not made subsequent to ninety (90) days after presentation of the claim.

History. Acts 1969, No. 135, § 1; A.S.A. 1947, § 14-614.1.

22-9-206. [Repealed.]

Publisher's Notes. This section, concerning preference for certain bidders on highway projects, was repealed by Acts 1993, No. 580, § 1. The section was de-

rived from Acts 1977, No. 102, §§ 1-3, 5; A.S.A. 1947, §§ 14-614.2 — 14-614.4, 14-614.6; Acts 1987, No. 281, § 1; 1991, No. 779, § 1; 1992 (1st Ex. Sess.), No. 9, § 1.

22-9-207. Construction or purchase of memorial, statue, bust, etc.

Any state agency, department, board, commission, or other body having the authority to construct or purchase, or negotiate for the construction or purchase of, any memorial, statue, bust, monument, or other similar article which is to be paid for from public funds shall establish specifications for the object, take competitive bids on the cost of constructing or furnishing the object, and award the contract to furnish or construct the object to the lowest responsible bidder meeting the established specifications.

History. Acts 1967, No. 354, § 1;
A.S.A. 1947, § 14-626.

22-9-208. Renovation of historic sites — Legislative intent and construction.

(a) The General Assembly finds and determines that:

(1) The mandatory adherence to competitive bidding of all costs in altering, repairing, or renovating historic sites and structures has resulted in increased costs due to the inability of bidders to accurately determine on the basis of only an external examination of the historic sites and structures the exact quantity of labor, materials, and supplies necessary to meet the restoration standards;

(2) The State of Arkansas would conserve state revenues by giving agencies charged with restoring or maintaining historic properties authority to select the contractors on the basis of the lowest responsible bid price, the bidder's experience in like work, and the techniques he or she proposes to employ, and by giving the agencies authority to reimburse contractors on an actual cost basis for those cost components which cannot be accurately predetermined before undertaking the project; and

(3) The procedures provided in subdivision (a)(2) of this section should be applicable for specific projects only after review and approval by the Chief Fiscal Officer of the State, the Arkansas Building Authority Council, and the Legislative Council. Provided, however, projects undertaken by public institutions of higher education exempt from review and approval of Arkansas Building Authority shall not require review and approval by the Arkansas Building Authority Council.

(b) In the event there is conflict between the provisions of this section and §§ 22-9-209 — 22-9-211 and the provisions of any other act insofar as the restoration of historic structures is concerned, the procedures set forth in this section and §§ 22-9-209 — 22-9-211 shall govern.

History. Acts 1977, No. 869, §§ 1, 5; added the last sentence in (a)(3); and
A.S.A. 1947, §§ 14-654, 14-654.3n; Acts made stylistic changes.
1999, No. 776, § 4; 2001, No. 961, § 10.

Amendments. The 1999 amendment The 2001 amendment, in (a)(3), added the last sentence, and deleted "The state

or entities of the state shall make an assessment regarding the applicability of those procedures provided in subdivision (a)(2) of this section on a project by project basis" at the end.

22-9-209. Renovation of historic sites — Advertising of contracts.

(a) No contract for the altering, repairing, or renovation of a recognized historic site or structure owned by the State of Arkansas or with title vested in the name of a state agency or of another taxing authority, where the estimated cost of the work equals or exceeds the sum of ten thousand dollars (\$10,000), shall be entered into between the agency and any contractor unless the agency shall have first published notice of intention to receive bids for improvements one (1) time each week for not less than two (2) consecutive weeks in a newspaper of general circulation published in the county in which the proposed improvements are to be made or in a trade journal reaching the construction industry.

(b)(1) The date of publication of the last notice shall be not less than one (1) week before the date affixed therein for the receipt of bids.

(2) If there is no newspaper regularly published in the county in which the proposed work is to be done, the notices may be published in any newspaper having a general circulation in the county.

(3) Nothing in this section shall be construed as limiting to two (2) the number of weeks the notices may be published.

(c)(1) All notices shall contain a brief description of the kind or type of work contemplated, the approximate location thereof, the place at which prospective contractors may obtain plans and specifications, the date, time, and place at which sealed bids will be received, and the amount, which may be stated in a percentage, of bond required.

(2) A statement shall be included notifying bidders that the proposed renovation will be contracted under the authority of §§ 22-9-208 — 22-9-211.

(3) The invitation for bids shall include a required resumé of similar restorative work performed by the contractor.

(d)(1) No agency shall advertise for bids under the provisions of this section and §§ 22-9-208, 22-9-210, and 22-9-211 without seeking the advice of the Legislative Council and the Arkansas Building Authority Council.

(2)(A) Provided, however, public institutions of higher education exempt from review and approval of the Arkansas Building Authority shall not be required to seek advice of the Arkansas Building Authority Council.

(B) Provided further, nothing in this section shall prevent an institution of higher education exempt from review and approval of the authority from entering into an agreement with the authority to provide such advice.

History. Acts 1977, No. 869, § 2; A.S.A. 1947, § 14-654.1; Acts 2001, No. 961, § 11. redesignated former (d) as present (d)(1) and made related changes; and added (d)(2)(A)-(B).

Amendments. The 2001 amendment

22-9-210. Renovation of historic sites — Award of contracts.

(a) The highest quality of restoration commensurate with reasonable costs and obtainable within available funds is considered to serve the best interests of the state. Cost, proposed method, and experience in similar work shall be considered by the agency as interrelated and inseparable factors in the award of a contract. Therefore, the award may be made other than to the lowest bidder. To permit evaluation of bidder qualifications, bid proposal documents shall include the following:

(1) The types of skills and numbers of persons of each skill needed to accomplish the work, together with the proposed rate of payment of each;

(2) The anticipated quantity of materials estimated to be required, together with the unit price for each;

(3) The proposed factor by which subdivisions (a)(1) and (2) of this section shall be multiplied to provide for overhead and profit;

(4) The calculations contained in subdivisions (a)(1), (2), and (3) of this section shall be extended and totaled to produce an estimated total cost for the project. Bid forms prepared by the contracting agencies shall be provided for the purpose of setting forth the calculations;

(5) A narrative statement of the methods and the techniques proposed for the restoration work;

(6) A listing of previous comparable projects completed by the bidder, including location, cost, date completed, and owner's name and address; and

(7) A resumé of the personal experience of the key supervisory personnel who will be directly involved in the execution of the project.

(b) No contract shall be awarded under the provisions of this section and §§ 22-9-208, 22-9-209, and 22-9-211 until the contracting agency has submitted copies of the invitation for bids, together with all proposals received and the agency's narrative statement of its evaluation and recommendations for approval, to the Chief Fiscal Officer of the State.

History. Acts 1977, No. 869, § 3; A.S.A. 1947, § 14-654.2.

22-9-211. Renovation of historic sites — Payment.

(a) The contracting agency shall establish, as part of the contract, a maximum compensation for the project.

(b) Payment shall be based on the work actually done and the materials actually used.

(c) The contractor shall submit periodic invoices for labor, materials, and overhead and profit in accordance with the rates established in the bid proposal.

History. Acts 1977, No. 869, § 4;
A.S.A. 1947, § 14-654.3.

22-9-212. Public improvements generally — Trench or excavation safety systems.

(a) Whenever any agency of this state or of any county, municipality, or school district, or other local taxing unit or improvement district, enters into a contract covered by the provisions of §§ 22-9-202 — 22-9-204 for the making of repairs or alterations or the erection of buildings or for the making of any other improvements, or for the construction or improvement of highways, roads, streets, sidewalks, curbs, gutters, drainage or sewer projects, or for any other construction project in which the public work or public improvement construction project involves any trench or excavation which equals or exceeds five feet (5') in depth, the agency, county, municipality, school district, local taxing unit, or improvement district shall require:

(1) That the current edition of Occupational Safety and Health Administration Standard for Excavation and Trenches Safety System, 29 CFR 1926, Subpart P, be specifically incorporated into the specifications for the project; and

(2) That the contract bid form include a separate pay item for trench or excavation safety systems to be included in the base bid.

(b) In the event a contractor fails to complete a separate pay item in accordance with the applicable provisions of subsection (a) of this section, the agency, county, municipality, school district, local taxing unit, or improvement district shall declare that the bid fails to comply fully with the provisions of the specifications and bid documents and will be considered invalid as a nonresponsive bid. The owners of the above-stated project shall notify the Safety Division of the Department of Labor of the award of a contract covered by this section.

History. Acts 1993, No. 291, §§ 1, 2.

22-9-213. Exemption of state projects from local regulation.

Public works construction projects conducted by Arkansas Building Authority or other state agencies are exempt from permit fees or inspection requirements of county or municipal ordinances.

History. Acts 1995, No. 1229, § 1.

SUBCHAPTER 3 — MINIMUM PREVAILING WAGE

SECTION.

22-9-301. Payment required.

22-9-302. Definitions.

SECTION.

22-9-303. Exceptions.

22-9-304. Construction of subchapter.

SECTION.

- 22-9-305. Penalties.
- 22-9-306. Powers of Department of Labor.
- 22-9-307. Rules and regulations.
- 22-9-308. Ascertainment of minimum prevailing wage before awarding contract — Specification of wage rate — Contractor's bonds.
- 22-9-309. Posting of wage scale — Withholding of payments.
- 22-9-310. Records.
- 22-9-311. Workers receiving less than stipulated rates.

SECTION.

- 22-9-312. Termination of contractor upon failure to pay wage rate — Void contracts.
- 22-9-313. Annual determination of wage rates — Procedure.
- 22-9-314. Certain contractors ineligible to bid on public works contracts — Quarterly lists.
- 22-9-315. Confidentiality of payroll records.

Effective Dates. Acts 1995, No. 548, § 13: July 1, 1995. Emergency clause provided: "It has been found and determined by the General Assembly of Arkansas that additional authority is needed by the Arkansas Department of Labor to effectively enforce the prevailing wage law; that effective enforcement of the law is necessary for the public health, safety, and welfare; and that such additional authority should be effective on July 1, 1995, when the Department of Labor is required to determine prevailing wage rates. Therefore, an emergency is declared to exist and this act shall take effect on July 1, 1995."

Acts 1997, No. 221, § 6: Feb. 20, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law regarding the

enforcement by the Director of the Department of Labor of the state's minimum wage laws is both time consuming and costly, resulting in unnecessary delay in recovery of wages for wage earners and unnecessary costs to the state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

RESEARCH REFERENCES

ALR. Government liability for failure to provide police protection to specifically threatened crime victim. 46 ALR 4th 948.

Am. Jur. 64 Am. Jur. 2d, Pub. Works, § 216 et seq.

22-9-301. Payment required.

It is declared to be the policy of the State of Arkansas that a wage of not less than the minimum prevailing hourly rate of wages for work of a similar character in the county or locality in which the work is performed and not less than the prevailing hourly rate of wages for holiday and overtime work shall be paid to all workers employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work.

History. Acts 1969, No. 74, §§ 2, 3; A.S.A. 1947, §§ 14-631, 14-632; Acts 1995, No. 548, § 1.

Publisher's Notes. This section is re-

pealed to the extent of any conflict with § 14-164-204, *Daniels v. City of Ft. Smith*, 268 Ark. 157, 594 S.W.2d 238 (1980).

CASE NOTES

Industrial Development Projects.

Acts 1960, No. 9, which authorizes cities to construct industrial facilities, and, in particular, § 14-164-204, conflict with this section, and § 14-164-204, as the most recent expression of the legislature, operates as a repeal of the provisions of

this section to the extent of the conflict; therefore, a contractor on a commercial construction project which was financed pursuant to Acts 1960, No. 9, was not required to pay the prevailing minimum wage. *Daniels v. City of Ft. Smith*, 268 Ark. 157, 594 S.W.2d 238 (1980).

22-9-302. Definitions.

As used in this subchapter:

(1) "Construction" means construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair, where the cost of all labor and material exceeds seventy-five thousand dollars (\$75,000);

(2) "County" means the county where the physical work upon the public works is performed;

(3) "Department" means the Department of Labor;

(4) "Locality" means a specific county or a specific group of counties in the same geographic area of the state as determined by administrative regulation of the Department of Labor;

(5) "Maintenance work" means the repair, but not the replacement, of existing facilities when the size, type, or extent of the existing facilities is not thereby changed or increased;

(6) "Minimum prevailing wage rates" means the wages paid, generally, in the county in which the public works are being performed, to workers engaged in work of a similar character;

(7) "Public body" means the State of Arkansas or any officer, board, or commission of the state, any county, city, municipality or other political subdivision, or any of the agencies thereof;

(8) "Public works" means all works constructed for public use, whether or not done under public supervision or direction or paid for wholly or in part out of public funds, but it does not include any work done for or by any drainage, improvement, or levee district; and

(9) "Workers" means laborers, workers, and mechanics, but special rates for apprentices shall apply only when the apprentices are registered in a recognized management-labor apprenticeship training program.

History. Acts 1969, No. 74, § 1; A.S.A. 1947, § 14-630; Acts 1995, No. 548, § 2.

Publisher's Notes. This section is re-

pealed to the extent of any conflict with § 14-164-204, *Daniels v. City of Ft. Smith*, 268 Ark. 157, 594 S.W.2d 238 (1980).

CASE NOTES

Industrial Development Projects.

Acts 1960 (Ex. Sess.), No. 9, which authorizes cities to construct industrial facilities, and, in particular, § 14-164-204, conflict with this section, and § 14-164-204, as the most recent expression of the legislature, operates as a repeal of the provisions of this section to the extent of the conflict; therefore, a contractor on a commercial construction project which was financed pursuant to Acts 1960, No. 9, was not required to pay the prevailing

minimum wage. *Daniels v. City of Ft. Smith*, 268 Ark. 157, 594 S.W.2d 238 (1980).

Where a city financed an industrial facility by issuing industrial development bonds pursuant to § 14-164-205, it was found that the facility was not "constructed for public use" within the meaning of subdivision (7) of this section. *Daniels v. City of Ft. Smith*, 268 Ark. 157, 594 S.W.2d 238 (1980).

22-9-303. Exceptions.

(a) The provisions of this subchapter shall not apply to workers who are employed as part-time or full-time employees of any public body; it is not the intent of this subchapter to prohibit any public body from performing necessary improvements of its public property, either by construction or maintenance, with public employees.

(b) Nothing contained in this subchapter shall be construed to apply to or affect highway, road, street, or bridge construction and maintenance or related work contracted for or performed by incorporated towns, cities, counties, or the Arkansas State Highway and Transportation Department.

(c) This subchapter shall not affect any public school construction unless federal matching funds are employed in paying for the construction.

History. Acts 1969, No. 74, §§ 3, 13; 1969, No. 275, § 2; A.S.A. 1947, §§ 14-632, 14-642.

Publisher's Notes. This section is re-

pealed to the extent of any conflict with § 14-164-204, *Daniels v. City of Ft. Smith*, 268 Ark. 157, 594 S.W.2d 238 (1980).

CASE NOTES

Industrial Development Projects.

Acts 1960 (Ex. Sess.), No. 9, which authorizes cities to construct industrial facilities, and, in particular, § 14-164-204, conflict with this section, and § 14-164-204, as the most recent expression of the legislature, operates as a repeal of the provisions of this section to the extent of the conflict; therefore, a contractor on a

commercial construction project which was financed pursuant to Acts 1960, No. 9, was not required to pay the prevailing minimum wage. *Daniels v. City of Ft. Smith*, 268 Ark. 157, 594 S.W.2d 238 (1980).

Cited: *Conway Corp. v. Construction Eng'rs, Inc.*, 300 Ark. 225, 782 S.W.2d 36 (1989).

22-9-304. Construction of subchapter.

(a) Nothing in this subchapter shall be construed to prohibit the payment to any worker employed on any public works of more than the prevailing rate of wages.

(b) Nothing in this subchapter shall be construed to limit the hours of work which may be performed by any worker in any particular period of time.

History. Acts 1969, No. 74, § 8; A.S.A. 1947, § 14-637.

22-9-305. Penalties.

(a) Any officer, agent, or representative of any public body who knowingly violates, or omits to comply with, any of the provisions of this subchapter and any contractor or subcontractor, or agent or representative thereof, doing public works who neglects to keep an accurate record of the name, address, social security number, occupation or work classification, hours worked, and actual wages paid to each worker employed by him or her in connection with the public works, who refuses to allow access to the records at any reasonable hour to any person authorized to inspect the records under this subchapter, or who knowingly submits to the Department or Labor false payroll or wage information shall be subject to a civil penalty of not less than fifty dollars (\$50.00) and not more than one thousand dollars (\$1,000) for each violation. Each day the violation continues shall, with respect to each employee, constitute a separate offense. In no event shall the civil penalty exceed ten percent (10%) of the contract or subcontract or ten percent (10%) of any unpaid wages due employees under the provisions of this subchapter, whichever sum is greater.

(b) Any worker who knowingly submits to the department a false claim for unpaid wages under the provisions of this subchapter shall be subject to a civil penalty of not less than fifty dollars (\$50.00) and not more than one thousand dollars (\$1,000).

(c)(1) The Director of the Department of Labor shall determine the amount of any civil penalty due under this section.

(2)(A) Such determination shall be final, unless within fifteen (15) days after receipt of notice thereof, the worker, contractor, subcontractor, or agent or representative thereof charged with the violation notifies the director in writing that he or she contests the proposed penalty.

(B) Notice of a proposed penalty shall be delivered by certified mail or by any other means authorized by law for service of process.

(3) In the event a penalty is contested, a final determination shall be made pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(4) The amount of such penalty when finally determined may be recovered in a civil action brought by the director in a court of competent jurisdiction without paying costs or giving bond for costs.

(d) Sums collected under this section shall be paid into the General Revenue Fund Account of the State Apportionment Fund.

(e) Assessment of a civil penalty by the director shall be made no later than three (3) years from the date of the occurrence of the violation.

History. Acts 1969, No. 74, § 7; A.S.A. 1947, § 14-636; Acts 1995, No. 548, § 3.

22-9-306. Powers of Department of Labor.

(a)(1) The Director of the Department of Labor or his or her authorized representatives shall have authority to:

- (A) Administer oaths;
- (B) Take, or cause to be taken, the depositions of witnesses; and
- (C) Require by subpoena the attendance and testimony of witnesses and the production of all books, records, and other evidence relative to any matter under investigation or hearing.

(2) The subpoena shall be signed and issued by the Department of Labor's authorized representative.

(3) In case of failure of any person to comply with any subpoena lawfully issued under this section or upon the refusal of any witness to produce evidence or to testify to any matter regarding which he or she may be lawfully interrogated, it shall be the duty of any circuit court or the judge thereof, upon application of the department's authorized representative, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued by the court or a refusal to testify therein.

(b) The director or his or her authorized representatives shall have authority to enter and inspect any construction site, place of business, or place of employment of any public body or any contractor or any subcontractor doing public works for the purpose of examining, inspecting, and copying any or all books, registers, payrolls, and other records as he or she may deem necessary or appropriate, and questioning employees, for the purpose of ascertaining compliance with the provisions of this subchapter and regulations issued thereunder.

(c) The director or his or her authorized representatives shall have authority to require from any contractor or subcontractor doing public works full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses, occupations, and such other information pertaining to his or her employees as the director or his or her authorized representative may deem necessary or appropriate.

(d) The authorized representative of the department shall have the power to certify to official acts.

(e)(1) The director is authorized to institute legal action in the name of the State of Arkansas, without paying costs or giving bond for costs, to recover any wages which he or she determines to be due to employees or workers under this subchapter. No legal action shall be brought by the director until after notice and opportunity for hearing pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and entry of a final administrative order. Following any appeals taken pursuant to the Administrative Procedure Act, § 25-15-201 et seq., the director shall be entitled to enforce his or her final administrative order in any court of competent jurisdiction. The director's findings of fact shall be conclusive in any such proceeding.

(2) The director, if successful, shall be entitled to attorney's fees. Such sums shall be placed in the General Revenue Fund Account of the State Apportionment Fund.

(3) Nothing in this subsection shall be construed so as to relieve an unsuccessful defendant from paying costs.

(f) The director or his or her authorized representatives shall have the authority to:

(1) Investigate as to any violation of this subchapter and the regulations issued thereunder;

(2) Institute actions for the penalties prescribed in this subchapter;

(3) Institute legal action to recover any wages which he or she determines to be due to employees or workers under this subchapter;

(4) Seek injunctive relief; and

(5) Enforce generally the provisions of this subchapter and the regulations issued thereunder.

History. Acts 1969, No. 74, § 10; A.S.A. 1947, § 14-639; Acts 1995, No. 548, § 4; 1997, No. 221, § 2.

22-9-307. Rules and regulations.

The Department of Labor shall establish rules and regulations for the purpose of carrying out the provisions of this subchapter.

History. Acts 1969, No. 74, § 7; A.S.A. 1947, § 14-636.

22-9-308. Ascertainment of minimum prevailing wage before awarding contract — Specification of wage rate — Contractor's bonds.

(a) Before any public body, excluding the Arkansas State Highway and Transportation Department, awards a contract or begins supervised construction for public works, it shall notify the Department of Labor to ascertain the prevailing hourly rate of wages in the county in which the work is to be performed, for each craft or type of worker needed to execute the contract or project.

(b)(1) The public body shall specify in the resolution or ordinance and in the call for bids for the contract that the minimum prevailing wage rates for each craft or type of worker and the prevailing wage rate for holiday and overtime work shall be paid.

(2) There shall be included in every specification for work coming under the provisions of this subchapter the minimum prevailing wage rates for each craft or type of worker as determined by the Department of Labor, and it shall be mandatory upon the public body, if it is supervised work, or upon the contractor to whom the contract is awarded and upon any subcontractor under him or her, to pay not less than the specified rates to all workers employed by them in the execution of the contract.

(c) The public body awarding the contract shall cause to be inserted in the contract a stipulation to the effect that not less than the prevailing hourly rate of wages as found by the Department of Labor or determined by the court on appeal shall be paid to all workers performing work under the contract.

(d) The public body awarding the contract shall require in all the contractor's bonds that the contractor include such provisions as will guarantee the faithful performance of the prevailing hourly wage clause as provided by the contract.

History. Acts 1969, No. 74, § 4; 1969, No. 275, § 1; A.S.A. 1947, § 14-633.

22-9-309. Posting of wage scale — Withholding of payments.

(a) The scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work.

(b) There may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer or agency to pay to laborers and mechanics employed by the contractor or subcontractor, if any, of the work, the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to the contractor, subcontractor, or their agents.

(c) Payment for the withholding required under subsection (b) of this section shall be made upon entry of a written final administrative order by the Department of Labor directing the public body or agency to release such funds to the department.

History. Acts 1969, No. 74, § 5; A.S.A. 1947, § 14-634; Acts 1995, No. 548, § 5.

22-9-310. Records.

(a) The contractor and each subcontractor shall keep an accurate record showing the names, addresses, social security numbers, occupations or work classifications, and hours worked of all workers employed by them in connection with the public works, and showing the actual wages paid to each of the workers.

(b) These records shall be open at all reasonable hours to the inspection of the Department of Labor or the public body awarding the contract, its officers, and agents.

(c) The contractor and each subcontractor shall, within ten (10) days after receipt of a written request from the department, the public body awarding the contract, or both, forward a certified copy of these records to the person making the request.

History. Acts 1969, No. 74, § 6; A.S.A. 1947, § 14-635; Acts 1995, No. 548, § 6.

22-9-311. Workers receiving less than stipulated rates.

(a) Any worker employed by a public body or by a contractor or subcontractor who shall be paid for his or her services a sum less than the stipulated rates for work done under the contract shall have the right to file a complaint with the Department of Labor for whatever differences there may be between the amount so paid and the rates provided by the contract.

(b) After investigation by the Department of Labor, if the complaint is found to be just, it shall be prosecuted by the department without cost to the worker.

(c)(1) All claims shall be filed with the department not more than thirty (30) days after the certificate of substantial completion is submitted to the public body.

(2) If a claim is timely filed, a worker shall be entitled to recover any unpaid wages due over the life of the public works project, but in no event shall an action be brought more than three (3) years after the date the wages became due and owing.

(d) Nothing in this section shall be construed to limit or restrict the Director of the Department of Labor's authority to seek recovery of unpaid wages pursuant to § 22-9-306.

History. Acts 1969, No. 74, § 11;
A.S.A. 1947, § 14-640; Acts 1995, No. 548,
§ 7.

22-9-312. Termination of contractor upon failure to pay wage rate — Void contracts.

(a) Every contract within the scope of this subchapter shall contain the provision that in the event it is found by the contracting officer or public body that any laborer or mechanic employed by the public body or by the contractor or subcontractor, if any, directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid, the public body concerned may, by written notice to the contractor, terminate the contractor's right to proceed with the work or such part of the work as to which there has been a failure to pay the required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his or her sureties shall be liable to the public body concerned for any excess costs occasioned thereby.

(b) Any contract made and entered into within the scope of this subchapter in violation thereof shall be void.

History. Acts 1969, No. 74, § 12;
A.S.A. 1947, § 14-641.

22-9-313. Annual determination of wage rates — Procedure.

(a)(1) The Department of Labor shall investigate and determine the prevailing hourly rate of wages in the counties.

(2) Determinations shall be made annually on or about July 1 of each year and shall remain in effect until superseded by a new determination.

(3) In determining prevailing rates, the Department of Labor shall ascertain and consider the applicable wage rates established by collective bargaining agreements, if any, wage determinations by the United States Department of Labor, and such rates as are paid generally within the locality.

(b) A certified copy of the determination shall be filed immediately in the Department of Labor in Little Rock, and copies shall be furnished to all persons requesting them.

(c)(1) At any time within thirty (30) days after the certified copies of the determinations have been filed with the Department of Labor, any person who may be affected thereby may object in writing to the determination, or such part thereof as he or she deems objectionable, by filing a written notice with the Department of Labor stating the specific grounds of the objection.

(2) Within thirty (30) days of the receipt of the objection, the Department of Labor shall set a date for a hearing on the objection, which date shall be within sixty (60) days of the receipt of the objection.

(3) Written notice of the time and place of the hearing shall be given to the objectors and any other interested party at least ten (10) days prior to the date set for the hearing.

(4) The Department of Labor, at its discretion, may hear each written objection separately or consolidate for hearing any two (2) or more written objections.

(d)(1) At the hearing, the Department of Labor shall introduce in evidence the investigation it instituted and other facts which were considered at the time of the original determination and which formed the basis for its determination.

(2) The Department of Labor, any objectors, or any other interested party may thereafter introduce any evidence material to the issues.

(e)(1) Within ten (10) days of the conclusion of the hearing, the Department of Labor must rule on the written objections and make such final determination as it believes the evidence warrants.

(2) Immediately upon the final determination, the Department of Labor shall file a certified copy of its final determination with the Department of Labor and shall serve a copy of the final determination on all parties to the proceedings by personal service or by registered mail.

(f)(1) The final decision by the Department of Labor concerning the prevailing wages in the county shall be subject to review by the circuit court of the county in which the determination is made, but only if suit is started within thirty (30) days by any person who is a party thereto.

(2) All proceedings in any court affecting a determination of the Department of Labor under the provisions of this subchapter shall have priority in hearing and determination over all other civil proceedings pending in the court, except election contests.

(3) The review by the circuit court shall be on the record made before the Department of Labor, and the decision of the Department of Labor shall be sustained if supported by substantial evidence.

(4) The finding of the Department of Labor ascertaining and declaring the prevailing hourly rate of wages shall be final unless reviewed under the provisions of this section.

History. Acts 1969, No. 74, §§ 8, 9;
A.S.A. 1947, §§ 14-637, 14-638.

22-9-314. Certain contractors ineligible to bid on public works contracts — Quarterly lists.

(a)(1) Any contractor or subcontractor determined by the Department of Labor to have violated the provisions of this subchapter shall be ineligible to bid on or be awarded any public works contract or to perform any construction work in any manner for any public body for a period of two (2) years from the date of the final administrative determination.

(2) Any firm, partnership, corporation, or other entity in which such ineligible contractor is an officer, stockholder, or has a financial interest, or supervises or directs work shall be ineligible to bid on or be awarded any public works contract or perform any construction work in any manner for any public body for a period of two (2) years after the date of the determination.

(b) Notwithstanding the provisions of subsection (a) of this section, any contractor or subcontractor may complete any work in progress or contract awarded prior to the date of the contractor's or subcontractor's ineligibility.

(c)(1) The department shall compile a quarterly list which shall include:

(A) The names of all contractors which, by a final administrative determination, have been found to be in noncompliance with the provisions of this subchapter after January 1, 1996, and within the previous two (2) years as of the date of such list; and

(B) The dates on which the latest violations of such contractors occurred.

(2)(A) Upon request, the department shall mail the quarterly list to any public body in this state which may award public works contracts.

(B) It shall be the duty of the public body to hold the contractor ineligible to bid on or to be awarded any public works contract or to perform any construction work in any manner for the public body pursuant to subsection (a) of this section.

(d) Any contractor or subcontractor who shall submit a bid, be awarded a contract, or begin performance of construction while ineligible pursuant to the provisions of this section may have its state contractor's license suspended for a period of time as set by the Contractors Licensing Board.

(e)(1) Any public works contract awarded to an ineligible contractor, or on which an ineligible subcontractor performs, may be declared in default by the public body.

(2)(A) Additionally, the public body may require the bonding company or the general contractor to furnish a replacement contractor at no additional cost to the public body.

(B) In such an event, the bonding company or general contractor shall be expeditious in maintaining the original schedule for completion of the contract, allowing no more than thirty (30) days to lapse between notice and furnishing a replacement contractor or subcontractor satisfactory to the public body.

(f) Nothing in this section shall be construed as a waiver of sovereign immunity or as creating a cause of action for money damages against any public body.

History. Acts 1995, No. 548, § 8.

22-9-315. Confidentiality of payroll records.

All payroll records or wage records submitted to the Department of Labor pursuant to the provisions of this subchapter for the purpose of determining prevailing wage rates or determining compliance with the provisions of this subchapter and the administrative regulations issued thereunder are confidential and shall not be disclosed to any unauthorized person or be taken, or withdrawn, copied, or removed, from the custody of the department or its employees.

History. Acts 1995, No. 548, § 9.

SUBCHAPTER 4 — CONTRACTORS' BONDS

SECTION.

22-9-401. Coverage.

22-9-402. Authorized bonding companies
— Agents.

22-9-403. Statutory liability as integral
part of bond — Limitation
of action.

SECTION.

22-9-404. Subcontractor bonds.

22-9-405. Prohibition on directed surety-
ship.

Cross References. Contractor's performance bonds and labor and material-men's bonds required, § 18-44-501 et seq.

Effective Dates. Acts 1957, No. 209, § 6: approved Mar. 12, 1957. Emergency clause provided: "The construction and repair of private and public buildings and other public works being delayed and hampered because of the ambiguity in the statutory requirements for contractors bonds, an emergency is declared to exist and the immediate operation of this act

being necessary for the preservation of the public peace, health and safety it shall be in force and effect from and after its passage."

Acts 1993, No. 190, § 7: emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that subcontractors are not currently required by law to insure their financial responsibility through the posting of a bond with the State of Arkansas. It is not in the

public interest to continue to endure the resulting poor quality and workmanship which lead to increased maintenance and replacement costs. This act establishes such a requirement and should be given immediate effect. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”
Acts 2001, No. 980, § 2: Sept. 1, 2001.

Acts 2001, No. 980, § 3: Sept. 1, 2001. Emergency clause provided: “It is found and determined by the General Assembly that federal law requires changes effective before September 1, 2001, and to ensure that the state contracts are lawful changes are necessary before September 1, 2001. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on September 1, 2001.”

RESEARCH REFERENCES

ALR. Definition of “public work” within statute relating to contractor’s bond. 48 ALR 4th 1170.
Am. Jur. 17 Am. Jur. 2d, Cont. Bond, § 43 et seq.

C.J.S. 72 C.J.S. Supp., Pub. Contr., § 41 et seq.
UALR L.J. Paul, The Law of Construction Bonds in Arkansas: A Review, 9 UALR L.J. 333.

22-9-401. Coverage.

- (a) All surety bonds required by the State of Arkansas or any subdivisions thereof by any county, municipality, school district, or other local taxing unit, or by any agency of any of the foregoing for the repair, alteration, construction, or improvement of any public works, including, but not limited to, buildings, levees, sewers, drains, roads, streets, highways, and bridges shall be liable on all claims for labor and materials entering into the construction, or necessary or incident to or used in the course of construction, of the public improvements.
- (b) Claims for labor and materials shall include, but not be limited to, fuel oil, gasoline, camp equipment, food for workers, feed for animals, premiums for bonds and liability and workers’ compensation insurance, rentals on machinery, equipment, and draft animals, and taxes or payments due the State of Arkansas or any political subdivision thereof which shall have arisen on account of, or in connection with, wages earned by workers on the project covered by the bond.

History. Acts 1929, No. 368, § 1; 1935, No. 82, § 1; Pope’s Dig., §§ 958, 7771, 8004, 8883; Acts 1953, No. 261, §§ 1, 2; 1957, No. 209, § 3; A.S.A. 1947, § 14-604.
Publisher’s Notes. Acts 1953, No.

261, § 3, provided that nothing in this section should be construed to repeal any law or parts of laws, or remedies then in effect, with reference to liens for the collection of taxes.

CASE NOTES

ANALYSIS

Construction.
Construction with other laws.
Holder of claims.
Liability on bond.

Negligence claims.
Recovery against sureties.
Waiver of statutory rights.

Construction.

This section must be liberally con-

strued. *Detroit Fid. & Sur. Co. v. Yaffe Iron & Metal Co.*, 184 Ark. 1095, 44 S.W.2d 1085 (1932).

Construction with Other Laws.

This section and Acts 1911, No. 446 [repealed, now see §§ 18-44-501 — 18-44-508], did not require two bonds since this section merely sets out claims which were within coverage of bond executed pursuant to Acts 1911, No. 446. *State ex rel. Berry Asphalt Co. v. Western Sur. Co.*, 223 Ark. 344, 266 S.W.2d 835 (1954).

Holder of Claims.

One who advanced money to a highway subcontractor to pay laborers and materialmen was not a holder of labor or material claims within this subchapter. *Ayres & Graves v. Ellis*, 185 Ark. 818, 49 S.W.2d 1056 (1932).

Liability on Bond.

Where city-approved bond issue raised money for construction of factory on land owned by a nonprofit corporation, later deeded to city, the surety on contractor's bond was liable for rentals as the contract was a public contract and the coverage of the bond was governed by this section. *National Sur. Corp. v. Edison*, 240 Ark. 641, 401 S.W.2d 754 (1966); *Integon Indem. Corp. v. Bull*, 311 Ark. 61, 842 S.W.2d 1 (1992).

Principal contractors and their sureties are not liable on their bond for supplies sold to subcontractors and used elsewhere even though the seller erroneously concludes that the supplies will be used on the particular bonded job. *Proctor Tire Serv. Inc. v. National Sur. Corp.*, 242 Ark. 695, 415 S.W.2d 45 (1967).

Contractor's bond was not liable for tires sold to a subcontractor who rarely used them on the bonded job. *Proctor Tire Serv., Inc. v. National Sur. Corp.*, 242 Ark. 695, 415 S.W.2d 45 (1967).

The surety on a general contractor's bond was liable for tools sold to a subcontractor even though the tools did not become a part of the construction but were retained by the subcontractor for use on other employment and became a part of his permanent assets. *National Sur. Corp. v. Ideal Lumber Co.*, 249 Ark. 545, 460 S.W.2d 55 (1970).

The surety is not liable for materials delivered to a subcontractor after the

bonded project is completed where the supplier fails to conduct an adequate investigation to determine where the materials are being used. *Ergon Asphalt & Emulsions, Inc. v. Hogan Constr. Co.*, 721 F. Supp. 1050 (E.D. Ark. 1989).

Negligence Claims.

The bond liability required by this section is limited to claims for labor and materials, so that a bond which covers claims of negligence provides broader coverage than that mandated under this section, and is a common law bond not governed by the six month statute of limitations set out in § 22-9-403. *United States Fid. & Guar. Co. v. Little Rock Quarry Co.*, 309 Ark. 269, 830 S.W.2d 362 (1992).

Recovery Against Sureties.

A materialman seeking recovery on the bond of the general contractor for materials and tools furnished a subcontractor is not required to establish liability of the general contractor in order to recover against the surety. *National Sur. Corp. v. Ideal Lumber Co.*, 249 Ark. 545, 460 S.W.2d 55 (1970).

Waiver of Statutory Rights.

Waiver of rights of subcontractor under public contractor's bond would not be implied or enforced without a showing of a clear intent to relinquish statutory rights. *Trinity Universal Ins. Co. v. Smithwick*, 222 F.2d 16 (8th Cir. 1955), cert. denied, 350 U.S. 837, 76 S. Ct. 74, 100 L. Ed. 747 (1955).

Where subcontractor brought action against surety of public contractor for balance due under contract, fact that subcontractor received periodic payments under estimates of partial completion did not amount to a giving up of waiver of statutory rights under the bond. *Trinity Universal Ins. Co. v. Smithwick*, 222 F.2d 16 (8th Cir. 1955), cert. denied, 350 U.S. 837, 76 S. Ct. 74, 100 L. Ed. 747 (1955).

Cited: *Detroit Fid. & Sur. Co. v. Yaffe Iron & Metal Co.*, 184 Ark. 1095, 44 S.W.2d 1085 (1932); *Consolidated Indem. & Ins. Co. v. Fischer Lime & Cement Co.*, 187 Ark. 131, 58 S.W.2d 928 (1933); *National Lumber & Creosoting Co. v. Mullins*, 187 Ark. 270, 59 S.W.2d 493 (1933); *Dow Chem. Co. v. Bruce Rogers Co.*, 255 Ark. 448, 501 S.W.2d 235 (1973).

22-9-402. Authorized bonding companies — Agents.

- (a) All bonds enumerated in § 22-9-401 shall be made by surety companies which have qualified and are authorized to do business in the State of Arkansas.
- (b) The bonds shall be executed by a resident agent or nonresident agent. The resident agent or nonresident agent shall be licensed by the Insurance Commissioner to represent the surety company executing the bond and filing with the bond the agent’s power of attorney as his or her authority.

History. Acts 1929, No. 368, § 2; 1935, 8005, 8884; A.S.A. 1947, § 14-605; Acts No. 82, § 2; Pope’s Dig., §§ 959, 7772, 1991, No. 1086, § 1; 2001, No. 980, § 1.

22-9-403. Statutory liability as integral part of bond — Limitation of action.

- (a) The liability imposed by § 22-9-401 on any bond furnished by a public works contractor shall be deemed an integral part of the bond, whether or not the liability is explicitly set out or assumed therein.
- (b)(1) No action shall be brought on a bond after one (1) year from the date final payment is made on the contract, nor shall an action be brought outside the State of Arkansas.
- (2) However, with respect to public works contracts where final approval for payment is given by the Arkansas Building Authority or by an institution of higher education exempt from construction review and approval by the authority, all persons, firms, associations, and corporations having valid claims against the bond may bring an action on the bond against the corporate surety, provided that no action shall be brought on the bond after twelve (12) months from the date on which the authority or the public institution of higher education approves final payment on the state contract, nor shall any action be brought outside the State of Arkansas in accordance with § 18-44-503.

History. Acts 1929, No. 368, § 3; 1935, No. 82, § 3; Pope’s Dig., §§ 960, 7773, 8006, 8885; Acts 1957, No. 209, § 4; A.S.A. 1947, § 14-606; Acts 1997, No. 293, § 1; 2001, No. 496, § 1; 2001, No. 961, § 12.

Amendments. The 2001 amendment by No. 496 substituted “one (1) year” for “six (6) months” in (b)(1).

The 2001 amendment by No. 961, in (b)(2), inserted “or by an institution ... Building Services,” deleted “Arkansas” following “date on which,” and inserted “or the public institution of higher education.”

CASE NOTES

ANALYSIS

- Construction.
- Common law bonds.
- Liability.
- Terms of bond.
- Timeliness.
- Unauthorized provisions.

Construction.

Section 22-9-203 sets forth procedures to be followed in advertising, evaluating, and acting upon bids for specified improvements and, although the section does not address any requirements pertaining to bid bonds or the liability there-

under, it does inferentially require that a bid bond be posted and that the required notice specify the amount thereof, expressed in percentage of the penal sum; because former A.S.A. 1947, § 14-114 (see now this section) addressed the requirements of bid bonds in connection with bids upon public construction contracts and defined the conditions of the bond, surety requirements, and liability under the bond, the two provisions are consistent and can be read together. *Mountain Home Sch. Dist. No. 9 v. T.M.J. Bldrs., Inc.*, 313 Ark. 661, 858 S.W.2d 74 (1993).

Common Law Bonds.

Statutory performance bond for contractor with improvement district which covered not only claims for material and labor but also required job to be completed in a workmanlike manner went beyond the statutory requirement of covering claims; hence, it was a common law bond and statute of limitations applicable to suits for recovery of claims against surety was five years instead of six-month statutory period set forth in this section. *State ex rel. Berry Asphalt Co. v. Western Sur. Co.*, 223 Ark. 344, 266 S.W.2d 835 (1954).

The bond liability required by § 22-9-401 is limited to claims for labor and materials so that a bond which covers claims of negligence provides broader coverage than that mandated under § 22-9-401 and is a common law bond not governed by the six month statute of limitations set out in this section. *United States Fid. & Guar. Co. v. Little Rock Quarry Co.*, 309 Ark. 269, 830 S.W.2d 362 (1992).

Liability.

Liability of defendant on his surety bond was absolute, notwithstanding the fact that plaintiff may not have been able to recover from the contractor, which was a county, because of Arkansas Constitution, Amendment 10. *Fort Smith Structural Steel Co. v. Western Sur. Co.*, 247 F. Supp. 674 (W.D. Ark. 1965).

Terms of Bond.

A highway contractor and his surety could not restrict liability on a bond for laborers' and materialmen's protection by

omitting from the bond the terms of this section. *Detroit Fid. & Sur. Co. v. Yaffe Iron & Metal Co.*, 184 Ark. 1095, 44 S.W.2d 1085 (1932).

The surety on a highway contractor's statutory bond is bound by the terms of the contract of which the statute is a part and its liability cannot be extended by implication unless it was clearly the intention of the parties to the contract. *New Amsterdam Cas. Co. v. Detroit Fid. & Sur. Co.*, 187 Ark. 97, 58 S.W.2d 418 (1933).

Timeliness.

In a materialman's suit to enforce claims against the bond of a highway contractor, the evidence was held to establish that the suits were commenced within six months from the date of the contractor's final estimate. *Consolidated Indem. & Ins. Co. v. Fischer Lime & Cement Co.*, 187 Ark. 131, 58 S.W.2d 928 (1933).

Where there was substantial evidence showing that a subcontractor's cause of action against the surety was based not on the original contract of suretyship, but on the surety's later assumption of responsibility for completion of the job and its direct promise to pay the subcontractor, the date of final payment on the contract was not controlling in determining timeliness of the action; accordingly, suit filed more than six months after the final contract payment was not barred. *Argonaut Ins. Co. v. M & P Equip. Co.*, 269 Ark. 302, 601 S.W.2d 824 (1980).

An action by laborers or materialmen against the surety upon a contract for the construction of public works must be brought within six months after final payment is made to the general contractor. *Argonaut Ins. Co. v. M & P Equip. Co.*, 269 Ark. 302, 601 S.W.2d 824 (1980).

Unauthorized Provisions.

A provision contained in bonds that "payment thereon shall be postponed until all claims of the Arkansas State Highway Commission hereon have been paid in full" is outside of and contrary to the requirements of this section and § 22-9-403 and is ineffective and without legal force and effect. *Fort Smith Structural Steel Co. v. Western Sur. Co.*, 247 F. Supp. 674 (W.D. Ark. 1965).

22-9-404. Subcontractor bonds.

(a)(1) If required by the general contractor, each subcontractor must provide the general contractor with a payment and performance bond made by a surety company qualified under § 22-9-401 et seq., or a cash bond in a sum equal to the full amount of the subcontractor's bid on a portion of a public works contract when:

(A) The subcontractor is the low responsible bidder for that portion of the contract;

(B) The state, pursuant to § 22-9-204, requires the general contractor to list the subcontractor in the general contractor's bid; and

(C) The work value of the subcontractor's bid is in excess of fifty thousand dollars (\$50,000).

(2) If the general contractor requires the subcontractor to provide a bond, the subcontractor shall provide the bond to the general contractor within five (5) days after the award of the contract by the general contractor to the subcontractor.

(b) If the subcontractor fails to provide a payment and performance bond when required by the general contractor, the subcontractor shall lose the bid and shall pay to the general contractor a penalty equivalent to ten percent (10%) of the subcontractor's bid or the difference between the low bid and the next responsible bid and the next responsible low bid, whichever is less, plus cost of recovery of the penalty, including attorney's fees. The purpose of this section is to compensate the general contractor for the difference between the low bid and the next responsible low bid.

(c) The general contractor may enforce this section by a civil action in circuit court.

(d) The provisions of this section shall not apply to contracts awarded by the State Highway Commission for construction or maintenance of public highways, roads, or streets.

History. Acts 1993, No. 190, §§ 1-3; 1993, No. 1061, §§ 1, 2.

22-9-405. Prohibition on directed suretyship.

(a) It is unlawful for any contracting body referenced in § 22-9-401 or any person acting on behalf of such contracting body to require a bidder or contractor to obtain or procure any surety bond from any particular insurance company or surety company, agent, or broker or to include surety bonds in an owner-controlled insurance program.

(b) Any person who violates the provisions of this section is guilty of a Class A misdemeanor.

History. Acts 2001, No. 771, § 1.

SUBCHAPTER 5 — DEPOSIT OF SECURITIES

SECTION.

- 22-9-501. Substitution of securities for retained payments — Contracts generally.
- 22-9-502. Substitution of securities for retained payments — Highway contracts.

SECTION.

- 22-9-503. Assignment of retained payments.
- 22-9-504. Deductions by state pursuant to contract.
- 22-9-505. Powers and duties of Treasurer of State.

Effective Dates. Acts 1969, No. 79, § 9: became law without Governor's signature, Feb. 21, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that many contractors enter into contracts with the State of Arkansas or one of its political subdivisions for the performance of work; that until a certain percentage of the work is done on such contracts, the contractor does not receive any of the contract price for such work; that the contractor needs cash in order to pay for materials and labor in constructing such projects; and that in order to provide an acceptable method of receiving part of the contract price, it is necessary that this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1971, No. 98, § 4: Feb. 16, 1971. Emergency clause provided: "It has been found and it is hereby declared by the General Assembly that the description of securities that may be deposited upon withdrawal of amounts retained for payments to contractors under public contracts is inadequate; that this inadequacy

can be remedied only by the adoption of the definition set forth in this act; and that in order to provide an acceptable and workable method for the implementation of Acts 1969, No. 79, it is necessary that this act become effective immediately. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1973, No. 77, § 2: Feb. 7, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that a number of contractors in this state incur considerable delay, inconvenience and undue cost under the present laws concerning deposits to be made in receiving payments under contracts, and that the same increases the cost of construction for public agencies, and that only by the immediate passage of this act may this situation be corrected by providing additional means of making such deposits. Therefore, an emergency is hereby declared to exist and this act, being immediately necessary for the preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

22-9-501. Substitution of securities for retained payments — Contracts generally.

(a) Under any contract made or awarded by the state or by any public department or official thereof, including the construction, improvement, or repair of any and all ways, roads, or bridges with appurtenances which, by law, are under the supervision of the State of Arkansas or any political subdivision, the contractor may withdraw the whole, or any portion thereof, of the amount retained for payments to the contractor pursuant to the terms of the contract upon depositing with the Treasurer of State, except as provided in § 22-9-502, direct

obligations of or obligations fully guaranteed by the federal government or any agency or department thereof, obligations of the State of Arkansas, obligations of any public housing authority, or certificates of deposit from federal or state banks or savings and loan associations.

(b) No amount shall be withdrawn in excess of the market value of the securities at the time of deposit or at the time of withdrawal.

History. Acts 1969, No. 79, § 1; 1971, No. 98, § 1; 1973, No. 77, § 1; A.S.A. 1947, § 14-643.

22-9-502. Substitution of securities for retained payments — Highway contracts.

(a) With respect to all contracts made or awarded by the State Highway Commission, including the construction, improvement, or repair of any and all roads and bridges with appurtenances which are, by law, under the supervision of the commission, a contractor may withdraw the whole, or any portion thereof, of the amount retained for payments to the contractor pursuant to the terms of the contract, upon making the deposits with the commission which are authorized in § 22-9-501 with respect to deposits to be made with the Treasurer of State.

(b) All powers and authorities vested in the Treasurer of State with respect to deposits to be made as authorized in this subchapter, with respect to contracts made or awarded by the commission, shall be equally applicable to the commission with respect to deposits made with the commission.

(c) The commission shall administer all powers vested in the Treasurer of State with respect to all deposits made in regard to contracts made or awarded by the commission.

History. Acts 1969, No. 79, § 6; A.S.A. 1947, § 14-648.

22-9-503. Assignment of retained payments.

(a) Any assignment of retained payments made by the contractor shall be honored by the Treasurer of State as part of the procedure to accomplish the substitution of securities under this subchapter, except that the assignment shall not be made without prior notification to the contracting agency of the state and the Treasurer of State.

(b) The assignment shall not impair the equitable rights of the contractor's surety in the retained payments or in the securities substituted therefor in the event of the contractor's default in the performance of the contract or in the payment of labor and material bills or other obligations covered by the surety's bond.

History. Acts 1969, No. 79, § 5; A.S.A. 1947, § 14-647.

22-9-504. Deductions by state pursuant to contract.

Any amount deducted by the state or by any public department or official thereof, pursuant to the terms of the contract, from the retained payments due the contractor shall be deducted first from that portion of the retained payments for which no security has been substituted and then from the proceeds of any deposited security. In the latter case, the contractor shall be entitled to receive interest, coupons, or income only from those securities which remain after the amount has been deducted.

History. Acts 1969, No. 79, § 4; A.S.A. 1947, § 14-646.

22-9-505. Powers and duties of Treasurer of State.

(a) The Treasurer of State shall have the power to enter into a contract or agreement with any state or national bank having a trust department located in Arkansas for the custodial care and servicing of any securities deposited with him or her pursuant to this subchapter.

(b) The services shall consist of the safekeeping of the securities and of all services required to effectuate the purposes of this subchapter.

(c) The Treasurer of State shall collect all interest or income, when due, on the obligations so deposited and shall pay the interest or income, when and as collected, to the contractor who deposited the obligations.

(d) If the deposit is in the form of coupon bonds, the Treasurer of State shall deliver each coupon as it matures to the contractor.

History. Acts 1969, No. 79, §§ 2, 3; A.S.A. 1947, §§ 14-644, 14-645.

SUBCHAPTER 6 — RETAINAGE**SECTION.**

22-9-601. Definitions.

22-9-602. Exception.

SECTION.

22-9-603. Waiver.

22-9-604. Procedure.

Effective Dates. Acts 1977, No. 235, § 8: Feb. 23, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that retainage provisions contained in many public construction contracts to be performed in this state are unduly restrictive and create a serious hardship on contractors performing such contracts; that this act is designed to prescribe the relative rights of public agencies and contractors with respect to retainage under public construction contracts, and to thereby provide ap-

propriate protection to public agencies and to contractors entering into contracts for public construction; and that this act should be given effect at the earliest possible date in order to clarify the relative rights of the parties to public construction contracts. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

Am. Jur. 64 Am. Jur. 2d, Pub. Works,
§ 95 et seq.

22-9-601. Definitions.

As used in this subchapter:

(1) "Construction contract" means a contract between a public agency and a prime contractor which obligates the prime contractor to construct, repair, replace, or maintain improvements for the public agency;

(2) "Cost of the project" means the sum the public agency originally agrees to pay the prime contractor for performance of the contract plus any other sums the public agency agrees to pay the prime contractor for extra-cost items included in the construction project which were not included in the original contract;

(3) "Prime contractor" means the party which, individually or in concert with other prime contractors, establishes a direct contractual relationship with the public agency obligating the prime contractor to construct improvements for the public agency. Where applicable under the law, the prime contractor shall be a contractor licensed and in compliance with Arkansas law;

(4) "Progress payments" means the monthly estimates submitted by the prime contractor to the public agency for payment of that portion of the work completed, including stored materials and equipment purchased; and

(5) "Public agency" means the State of Arkansas or any of its agencies, departments, or institutions or any political subdivision of the state, or taxing unit, and includes any nonprofit corporation or association receiving public funds in whatever form, including grants, loans, and subsidies.

History. Acts 1977, No. 235, § 1; 1979,
No. 594, § 1; A.S.A. 1947, § 14-653.

22-9-602. Exception.

The provisions of this subchapter shall not be applicable to contracts entered into by the State Highway Commission for the construction or maintenance of public highways, roads, or streets.

History. Acts 1977, No. 235, § 5;
A.S.A. 1947, § 14-653.4.

22-9-603. Waiver.

The parties to a construction contract to which this subchapter is applicable shall have no authority to vary or waive the provisions of this subchapter by agreement of the parties.

History. Acts 1977, No. 235, § 4;
A.S.A. 1947, § 14-653.3.

22-9-604. Procedure.

(a)(1) In case of a construction contract entered into between a public agency and a contractor who is required to furnish a performance bond, the contractor shall be entitled to payment of ninety percent (90%) of the earned progress payments when due, with the public agency retaining ten percent (10%) to assure faithful performance of the contract.

(2) Upon certification by the project architect or engineer that the construction contract is fifty percent (50%) complete, no further retainage will be withheld from the monthly estimates.

(b) All sums withheld by the public agency shall be held in escrow and shall be paid to the contractor within thirty (30) days after the contract has been substantially completed.

(c) In the event the construction contract requires the contractor to purchase and furnish materials or equipment that will be stored on the job site or in a bonded warehouse by the contractor and used in the job as required by the construction contract, no retainage will be withheld on that amount of the submitted progress payment pertaining to the cost of these stored materials or equipment.

History. Acts 1977, No. 235, §§ 2, 3;
A.S.A. 1947, §§ 14-653.1, 14-653.2.

SUBCHAPTER 7 — DISPLACED PERSONS

SECTION.

22-9-701. Relocation assistance and payments.

SECTION.

22-9-702. Payments not compensation for realty taken.

A.C.R.C. Notes. Acts 1973, No. 12, § 1, provided: "The General Assembly recognizes that many projects are undertaken by various agencies, departments and instrumentalities of the State of Arkansas by counties, municipalities and other political subdivisions of the state, and by improvement districts and other public entities, which are wholly or partially financed by federal funds and which involve the acquisition, condemnation or demolition of real property or some other action which results in the displacement of persons from their homes and businesses; that Public Law 91-646 of the United States Congress requires that on and after July 1, 1972, all states must provide specified relocation benefits and advisory assistance to persons displaced

by such federally aided projects; that unless legislation is enacted to authorize such state instrumentalities and subdivisions, and other public entities, to make such payments and to provide relocation assistance and payments to persons displaced by such projects, substantial federal funds may be lost; and that it is the purpose and intent of this act to authorize state agencies, departments and instrumentalities, counties and municipalities, levee and drainage districts and other improvement districts, and other public entities undertaking projects which are partially financed by federal funds to provide such relocation assistance and to make such payments to persons displaced by such projects as will comply with the provisions of Public Law 91-646."

RESEARCH REFERENCES

ALR. State relocation assistance laws.
49 ALR 4th 491.

22-9-701. Relocation assistance and payments.

When any department, agency, or instrumentality of the state, or any county, municipality, or other political subdivision, or any levee, drainage, or other improvement district, or any other public entity subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 undertakes any program or project wholly or partially financed with federal funds which involves the acquisition, condemnation, or demolition of real property or other action which results in any persons being displaced from their homes or businesses, the state department, agency, or instrumentality, or county, municipality, or other political subdivision, or levee, drainage, or other improvement district, or other public entity is authorized to provide relocation assistance and to make relocation payments to the displaced persons and to do such other acts and follow such procedures and practices as may be necessary to comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

History. Acts 1973, No. 12, § 2; A.S.A. 1947, § 14-1001.
U.S. Code. The Uniform Relocation Assistance and Real Property Acquisition

Policies Act of 1970, referred to in this section, is codified as 42 U.S.C. § 4601 et seq.

CASE NOTES

ANALYSIS

Purpose.
Utilities.

Purpose.
This section reflects an intent to encourage the payment of costs of relocation in order to take full advantage of the federal payments provided by 42 U.S.C. § 4601 et seq. Southwestern Bell Tel. Co. v. City of

Fayetteville, 271 Ark. 630, 609 S.W.2d 914 (1980).

Utilities.
Utilities were entitled to reimbursement for costs of relocation of telephone poles and gas meters necessitated by federally funded municipal street project. Southwestern Bell Tel. Co. v. City of Fayetteville, 271 Ark. 630, 609 S.W.2d 914 (1980).

22-9-702. Payments not compensation for realty taken.

Any payment made under the authority granted in § 22-9-701 shall be for compensating or reimbursing the displaced person in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the payments shall not, for any purpose, be deemed or considered compensation for real property acquired or as compensation for damages to remaining real property.

History. Acts 1973, No. 12, § 3; A.S.A. 1947, § 14-1002.

U.S. Code. The Uniform Relocation Assistance and Real Property Acquisition

Policies Act of 1970, referred to in this section, is codified as 42 U.S.C. § 4601 et seq.

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